II - 2 (T)

रजिस्टर्ड नं० डी० 221 REGISTERED No. D. 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

CENTRAL SECRETARIAT LIBRARY GOVERNMENT OF INDIA

सं० 6] नई दिल्ली, बुधवार, फरवरी 26, 1969/फाल्गुन 7, 1890
No. 6] NEW DELHI, WEDNESDAY, FEBRUARY 26, 1969/PHALGUNA 7, 1890

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following report of the Joint Committee of the Houses of Parliament on the Bill to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto was presented to the Rajya Sabha on the 26th February, 1969.

COMPOSITION OF THE JOINT COMMITTEE

MEMBERS

Rajya Sabha

1. Shrimati Violet Alva—*Chairman*
2. Shri K. V. Raghunatha Reddy
3. Shri M. M. Dharia
4. Shri Babubhai M. Chinai
5. Shri Arjun Arora
6. Shri Awadheshwar Prasad Sinha
7. Shri Chandra Shekhar

*8. Shri T. N. Singh

**9. Dr. Anup Singh

*Appointed on the 30th April, 1968, *vice* Shri R. K. Bhuwalka retired from the membership of the Rajya Sabha on the 2nd April, 1968.

**Died on 28th January, 1969

10. Shri Gulam Nabi Untoo
11. Shri Niranjan Verma
12. Shri Mulka Govinda Reddy
13. Shri Dahyabhai V. Patel
14. Shri K. Damodaran
15. Shri B. N. Mandal

Lok Sabha

16. Shri G. M. Bakshi
17. Shri B. Bhagavati
18. Shri Onkar Lal Bohra
19. Shri Valmiki Choudhury
20. Shri Bharat Singh Chowhan
21. Shri S. R. Damani
22. Shri C. Dass
23. Shri C. C. Desai
24. Mahant Digvijai Nath
25. Shri K. R. Ganesh
26. Shri Bimalkanti Ghosh
***27. Shri P. K. Vasudevan Nair
28. Shri Hem Barua
29. Shri Prabhu Dayal Himatsingka
30. Shri M. N. Naghnoor
31. Chaudhary Nitiraj Singh
****32. Seth Achal Singh
33. Shri Anantrao Patil
34. Shri S. R. Rane
35. Shri Rabi Ray
36. Shri G. S. Reddi
37. Shri A. S. Saigal
38. Shri S. C. Samanta
39. Shri V. Sambasivam
40. Shrimati Savitri Shyam
41. Shri Era Sezhiyan
42. Shri Ramshekhar Prasad Singh
43. Shri Krishna Dev Tripathi
44. Shri R. Umanath
45. Shri Fakhruddin Ali Ahmed

***Appointed on the 20th December, 1968, *vice* Shri Indrajit Gupta resigned the membership of the Committee.

****Appointed on the 7th May, 1968, *vice* Shrimati Vijay Lakshmi Pandit resigned the membership of the Committee.

REPRESENTATIVES OF THE MINISTERIES

Ministry of Law

Shri S. K. Maitra, Joint Secretary and Legislative Counsel

Shri S. Ramaiah, Assistant Legislative Counsel, Ministry of Industrial Development and Company Affairs (Department of Company Affairs)

Shri S. K. Dutta, Secretary

Shri R. R. Desai, Joint Secretary

Shri B. P. Roy, Deputy Secretary

Shri B. Dutta, Director of Research & Statistics

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary

Shri S. P. Ganguly, Deputy Secretary

Shri Kishan Singh, Under Secretary.

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto, was referred, having been authorised to submit the Report on their behalf, present this their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Rajya Sabha on the 18th August, 1967. The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri Fakhruddin Ali Ahmed, Minister of Industrial Development, Internal Trade and Company Affairs, on the 20th November, 1967 and was adopted by the House on the 21st November, 1967.

3. The Lok Sabha discussed and concurred in the motion on the 23rd December, 1967.

4. The message from the Lok Sabha was reported to Rajya Sabha on the 26th December, 1967.

5. The Committee held 29 sittings in all. Of these 7 sittings were held at Bangalore during the period from the 10th June to 18th June, 1968 with the permission of the Chairman, Rajya Sabha.

6. At their first sitting held on the 29th January, 1968, the Committee decided that a Press Communique be issued inviting memoranda on the Bill from various associations, organisations and individuals interested in the subject matter of the Bill advising them to send their memoranda so as to reach the Rajya Sabha Secretariat by the 15th March, 1968. The Committee further decided to call witnesses for giving oral evidence on the Bill and authorised the Chairman to decide, after examining all the memoranda, as to who might be invited for the purpose. The Chairman also agreed to consider such names, including those of the representatives of employers' and employees' organisations, as may be suggested by the Members for giving oral evidence before the Committee.

*Published in Part II, Section 2 of the Gazette of India Extraordinary, dated the 18th August, 1967.

7. Seventeen Memoranda etc. on the Bill were received by the Committee.

8. The Committee heard evidence tendered by thirty witnesses.

9. The Committee decided that the evidence tendered before them alongwith the memoranda, if any, submitted by the witnesses called be laid on the Table of the House.

10. The Report of the Committee was to be presented on the 16th February, 1968. The Committee were, however, granted four extensions of time; for the first time upto the 26th August, 1968, again upto the 25th November, 1968, and then again upto the 24th December, 1968 and lastly upto the 28th February, 1969.

11. The Committee considered the Draft Report on the 17th February, 1969 and adopted it on the same day.

12. The principal changes suggested by the Committee in the Bill and the reasons therefor are set out in the succeeding paragraphs:—

Clause 2

Paragraph (*d*).—The Committee carefully considered from all aspects the question as to what factors should determine whether an undertaking is or is not a dominant undertaking and came to the conclusion that in determining whether an undertaking is or is not a dominant undertaking in relation to a particular type of goods, regard should be had to the proportion which the aggregate production of the undertaking bears to the aggregate production of those goods in India or any substantial part thereof. Such a course would eliminate, the Committee hope, the apprehension felt in some quarters that if in some cases, the figures with regard to the goods produced in some remote part of India are not available, it would not be possible to determine whether an undertaking is or is not a dominant undertaking. The Committee have accordingly substituted the words "India or any substantial part thereof" for the words "India or any part thereof" occurring in clauses (i) and (ii) of the sub-paragraph of the paragraph.

The Committee feel that in arriving at the figures of total production of any goods or quantum of any services rendered, the data relating to the production of goods and services of only those undertakings which are governed by the Factories Act, 1948 should be taken into account and that goods produced by Cottage Industries and Small Scale Industries shall not be taken into account. The Committee have accordingly added a proviso to the paragraph.

The Committee feel that for the purpose of determining whether an undertaking is producing, supplying, distributing one-third of any goods or providing or controlling one-third of any services, the Government should, *inter-alia* take into consideration the quantity of those goods or services *instead* of the quality of the same as was originally provided in Explanation III to the paragraph. The Committee have accordingly substituted the word "quantity" for the word "quality", which, incidentally is not measurable.

The Committee are of the opinion that in determining the question as to whether an undertaking is or is not a dominant undertaking, the lowest production made or services rendered during any one year out of the three calendar years immediately preceding the year in which such question arises, should be taken into consideration. And for that purpose the figures published by the Central Government with regard to the total production made or services rendered during the relevant year, should be the basis for determining such a question. The Committee have accordingly added two new explanations namely Explanation IV and Explanation VI, to the paragraph.

New explanation V merely clarifies that for the purpose of explanation IV "production" includes supply, distribution and control of goods.

Paragraph (e).—The Committee feel that while working out the aggregate production of particular goods in the country, imported goods should be excluded therefrom. However, imported goods should be taken into account in relation to supply, distribution or control of such goods in the country. The Committee have accordingly revised the definition.

Paragraph (g).—The Committee feel that the definition of the term "inter-connected undertakings" should not only include inter-connections between various forms of undertakings as was originally, provided, but should also cover cases of simultaneous inter-connections. The Committee have, therefore, widened the scope of the definition to cover all possible types of inter-connections.

The illustration and the explanation added to the paragraph amply clarify the intention of the Committee in this regard.

Paragraph (i).—The Committee feel that it is not necessary to enumerate in relation to monopolistic trade practice causes such as 'adoption of any practice, pursuit of any commercial policy or any act of omission' which prevent or lessen competition in the production, supply etc. of goods or services, as it might unnecessarily restrict the scope of the definition. Sub-para (ii) of the paragraph has accordingly been amended. The other changes made in the paragraph are of a drafting and clarifying nature.

Paragraph (*j*).—The Committee have revised the definition of the term "monopolistic undertaking".

Besides "dominant undertaking" which has already been provided in the original definition an undertaking which together with not more than 2 other independent undertakings produces, supplies, distributes etc. one-half of the total goods; or provides or controls not less than one-half or services will now come within the purview of the definition of "monopolistic undertaking."

Besides, it has been provided that for the purpose of calculating total production the figures of production, supply and distribution of goods by cottage industries and small-scale industries shall be excluded.

The Committee feel that the same criteria (including the production figures published by the Government) which are made applicable in the determination of a dominant undertaking should be applied in the determination of a monopolistic undertaking also. Necessary changes have been made in the paragraph.

Paragraph (*v*).—The Committee are of the opinion that the definition of term "undertaking" should more appropriately be confined to the production, supply, distribution or control of goods and services and references to ownership should be omitted. The definition has, therefore, been amended and all references to ownership have been omitted.

Clause 3

The Committee feel that the provisions of the Bill should not apply to any undertaking owned or controlled by a statutory corporation. However, care has been taken to see that no company governed by the provisions of the Companies Act, 1956, can claim an exemption from the provisions of this Bill. The Committee, have, therefore, qualified the expression "corporation" by the words "(not being a company)" occurring in para (c) of the clause.

The Committee feel that in para (e) of the clause the word "management" will be more appropriate than the word "control" in relation to an industrial undertaking. Necessary amendment has been made in the said para. Incidentally, this change will also be in conformity with the Industries (Development and Regulation) Act, 1951.

Clause 5

The Committee are of the view that persons having adequate knowledge or experience of accountancy should also be eligible for being appointed as members of the Monopolies and Restrictive Trade Practices Commission. The Committee have accordingly added "accountancy" in sub-clause (2) of the clause.

Clause 6

Sub-clause (1).—The Committee are of the opinion that no member of the Monopolies and Restrictive Trade Practices Commission should hold office for a total period exceeeding 10 years or after he has attained the age of 65 years, whichever is earlier. The Committee have added a proviso to that effect in the sub-clause.

Sub-clause (5).—The Committee feel that the remuneration, allowances and other conditions of service of the Chairman and members of the Commission should be prescribed by rules rather than be determined by the Central Government. Necessary changes have accordingly been made in this sub-clause.

Sub-clause (7) (*New*).—The Committee have provided that the Chairman and members of the Commission should, before they enter upon office, make and subscribe an oath of office and secrecy in the form to be prescribed by rules. A new sub-clause has accordingly been added.

Sub-clause (8) [*Original sub-clause* (7)].—The Committee are of the view that the provision debarring an ex-member of the Commission from holding office in any industry or undertaking is very harsh. The Committee feel that such member should only be debarred from holding office in those industries or undertakings to which the provisions of the Bill apply and that such disqualification should operate for a period of five years only from the date when he ceases to be a member of the Commission. The sub-clause has been amended accordingly.

Clause 8

The Committee feel that since the Director of Investigation is intended to assist the Commission in making investigations for the purposes of this Bill, it is necessary that the Commission should be consulted before making his appointment. The clause has been amended suitably.

Clause 10

The Committee are of the opinion that to discourage frivolous complaints, the Commission may inquire only into those complaints of monopolistic or restrictive trade practices which are received by it from any trade or consumer's association having a membership of not less than twenty-five persons or from twenty-five or more consumers. Sub-para (i) of para (a) has accordingly been amended. The Committee also feel that since the Director of Investigation himself is the authority for making investigations for the purposes of this Bill, it will not be appropriate for him to approach the Commission with a complaint in this behalf. The reference to the 'Director' has accordingly been omitted from sub-para (iii).

The Committee also consider that the Commission should have besides the power to make inquiries on complaints made to it, the power to enquire into the cases of monopolistic or restrictive trade practices upon its own knowledge or information. A new sub-para (iv) to para (a) has been added and necessary amendments in para (b) have been made to that effect.

Clause 18

Since the formation of benches by the Commission has already been provided in clause 16, the words "the formation and" appearing in para (b) of sub-clause (1) are reduntant and hence deleted.

Original Clause 19

The Committee believe that the Commission being a responsible body would conduct its proceedings with as little formality and technicality as the requirements of this Act and a proper consideration of the matters before it permit. Further, as a new clause 30 has been inserted for the expeditious disposal of cases by the Commission as well as the Central Government, the Committee feel that retention of this clause is not necessary. The clause has accordingly been deleted.

Clause 20 (*Original Clause* 21)

In view of the revised definition of the expression "inter-connected undertakings", sub-para (iii) of paragraph (a) of the Clause is unnecessary and hence the same has been deleted.

The Committee feel that for the purposes of Part A of Chapter III of the Bill, the point of time, with reference to which the "value of assets" of an undertaking, whether dominant or otherwise, is to be determined, should be specified in the clause. An explanation to that effect has been added to the clause.

Clause 21 (*Original Clause* 22)

The changes made in the clause are of a drafting and clarifying nature.

Clause 22 (*Original Clause* 23)

Sub-clause (1) of the clause originally provided that no person or authority except the Central Government shall, after the commencement of the Act establish, without the previous permission of the Central Government any new undertaking which when established, would become an inter-connected undertaking of an undertaking to which section 20 applies. Thus worded, this provision would have prevented a State Government from establishing any such undertaking without the prior permission of the Central Government.

The Committee, however, feel that a State Government should not be required to obtain such permission from the Central Government. The Committee have accordingly omitted the reference to the Central Government so that reference to Government may include State Governments as well under the provisions of the General Clauses Act, 1897. As a consequence the proviso to sub-clause (i) has also been deleted.

Clause 23 (*Original Clause* 24)

The changes made in sub-clauses (1) and (9) of the clause are only of a drafting and simplifying nature.

Clause 25 (*Original Clause* 26)

The Committee feel that—

(i) there need not be a general restriction on the directors of undertakings taking up the appointments as directors of undertakings to which part A applies and that it would be more appropriate if that restriction is imposed on a director of an undertaking to which Part A applies from becoming a director of any other undertaking;

(ii) as a consequence of (i) above and in view of the revised definition of the term "undertaking," reference to "an undertaking engaged in the same line of business or a banking company" is not necessary;

(iii) approval of the Central Government for appointment of a person as a director of another undertaking should not be necessary unless such person holds office as a director in more than ten inter-connected undertakings.

The Committee have accordingly amended sub-clause (1) and the proviso thereto to give effect to the above objectives.

Clause 26 (*New*)

Part A of Chapter III deals with one of the most important aspects of concentration of economic power. The various clauses of this Part provide *inter alia* for the expansion, establishment of new undertakings, mergers, amalgamations, etc. The Committee feel that in order to exercise effective control, some obligation should be cast on undertakings to which this Part applies to get themselves registered with the Government. The Committee have accordingly added a new clause providing that undertakings to which Part A applies or becomes applicable, should get themselves registered with the Central Government within the time stipulated in sub-clause (1) of the new clause. Provision has also

been made in sub-clauses (2) and (3) for the issue of a certificate of registration and its cancellation in certain circumstances.

Clause 27

The clause provides for reference to the Monopolies and Restrictive Trade Practices Commission for an enquiry into the working of an undertaking which, in the opinion of the Central Government is prejudicial to the public interest. The Commission has to report to the Central Government its opinion on the desirability of (i) the division of any trade of the undertaking or (ii) the division of any undertaking or inter connected undertakings into a number of undertakings. The Committee are of the opinion that the Commission should also be empowered to recommend to the Central Government the manner in which such division should be made and the compensation, if any, that may be payable on such division. Sub-clauses (1) and (3) of the clause have accordingly been amended. Sub-clause (2) of the said clause has also been amended to bring the language of the said sub-clause in conformity with the language of sub-clause (1).

The Committee have also added a new sub-clause (5) to clarify that an officer of a company who ceases to hold office as a consequence of the division of an undertaking or inter-connected undertakings shall not be entitled to claim any compensation for such cesser.

Clause 28

The clause lays down the various matters which the Central Government or the Commission should take into account before according approval to schemes of mergers, expansions, amalgamations, take-overs, divisions etc. The Committee feel that "man power" should also be one of the criteria which should be taken into consideration by Central Government or the Commission, as the case may be. Paragraph (c) has accordingly been amended.

Clause 29

The amendment made in the clause rectifies a printing error which had occurred in the Bill.

Clause 30 (*New*)

The Committee are of the opinion that definite time limits should be specified in the Act itself for the disposal by the Central Government or the Commission, as the case may be, of (i) notice for expansion of an undertaking; (ii) application for establishment of new undertakings; and (iii) proposals for mergers, amalgamations and take-overs of undertakings. The new clause has been added for this purpose.

Clause 31 (*Original clause* 30)

The amendments made in the clause are of clarifying nature.

Clause 32 (*Orinigal clause* 31)

The Amendments made in the clause are of a drafting nature.

Clause 33 (*Original clause* 32)

Amendments have been made in the clause with a view to checking evasion from the provisions concerning registration of agreements.

Clause 34 (*Original clause* 33)

New sub-clause (2) has been added to enable the Central Government to appoint additional Officers as might be necessary to assist the Registrar of Restrictive Trade Agreements in the discharge of his duties.

Clause 35 (*Original clause* 34)

The Committee feel that all the existing agreements should be registered within sixty days from the commencement of this Act instead of 45 days as originally provided in sub-clause (1) of the clause and similarly the period for registration of 45 days should be extended to sixty days in the case of agreements to be entered into after the commencement of this Act. Sub-clause (2) has been amended accordingly.

Clause 38 (*Original clause* 37)

The original clause provided the circumstances in which a trade practice would be deemed to be prejudicial to the public interest and the question as to whether such a practice was in existence was left to be determined by the Commission. The Committee feel that the appropriate course in this matter will be to lay down the circumstances, the operation of which would not be prejudicial to the public interest. The Committee have accordingly revised the entire clause so that a restrictive trade practice shall be deemed to be prejudicial to the public interest unless the Commission is satisfied that the prevalent practice is justifiable on any one of the eight grounds specified in the revised clause. The burden of proving that a prevalent trade practice is not prejudicial to public interest has now been cast on the undertaking indulging in that particular practice and not on the applicant.

Clause 39 (*Original clause* 38)

The Committee feel that articles made under a trade mark should also come within the ambit of the clause. Sub-clause (3) has, therefore, been amended.

Clause 43 (*Original clause* 42)

The Committee feel that in order to carry out effectively the purposes of this Act, Government should be given over-riding-powers to call for information from any undertaking. The words "Notwithstanding anything contained in any other law for the time being in force" have therefore been added at the beginning of the clause.

Clause 48 (*Original clause* 47)

The amendment made in sub-clause (1) is of a verbal nature. Insertion of sub-clause (2) is consequential to the insertion of new clause 26 regarding registration of undertakings.

Clause 54 (*Original clause* 53)

The amendment made in sub-clause (3) of the clause is of a drafting nature.

Clause 62 (*Original clause* 61)

The Committee are of the opinion that not only the annual report of the Central Government but every report made to the Central Government by the Commission should be laid before the Parliament. Necessary amendment has accordingly been made in the clause.

13. The other changes made in the Bill are of a consequential or drafting nature.

14. The Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
February 17, 1969.

VIOLET ALVA,
Chairman of the Joint Committee.

MINUTES OF DISSENT

I

While I am in general agreement with the Report of the Joint Committee, I, however, differ on a few important and fundamental aspects of certain clauses of the Bill and consider it my duty to set out my own views on these as below:

2. Chapter III of the Bill aims at curbing the growth of concentration of economic power and some of the clauses under this Chapter have a crucial bearing on the country's future industrial growth. At a time when the immediate need is for more and more industrial production both for internal consumption and for exports, at a time when the industrial base should be enabled to expand as rapidly as possible and at a time when new entrepreneurs need to be encouraged and helped and the existing ones given all incentive and support, one cannot but draw the conclusion from the existing clauses under Chapter III that Government has certain mental reservations about the set up of the present business community in India, especially against some leading industrial houses. This, I am afraid, may bring about a situation whereby further industrial development may get stiffled and the country may get stuck up in economic growth just because of our reverence to certain ideologies and political philosophies instead of practical wisdom governing our policies.

3. It is significant to note that the Monopolies Enquiry Commission itself observed that "our industrial development owes much to the adventure and skill of a few men who helped to start new industries and it is this very sector which has been able to supply managerial skill of a high order and quality". It is equally pertinent to note that this Commission has nowhere attempted any clear definition of the phrase "concentration of economic power". In fact, the Commission has accepted that it was not easy to give any precise definition and side-tracked the issue by stating that it was not necessary for the purpose of the enquiry. In the process what has happened is that they have invariably identified the existence and growth of large industrial units with concentration of economic power. It will be, therefore, legitimate to infer that the recommendations of the Commission in respect of placing checks on concentration of economic power are based more on apprehension that a situation might arise in the future rather than on the reality of the existence of monopolies trying to manipulate the supply for gaining substantial control over the market and prices for individual advantage on any appreciable scale. It is in this context that I would like to urge that it would not be prudent to deny opportunities for expansion and bringing into existence new units merely on apprehensions. Competitive strength and technical efficiency can be achieved only if industries are enabled to take advantage of economies of scale. I would, therefore, have preferred if the provisions of this Chapter were deleted. If, however, they are to be retained, the following aspects should have been given due consideration.

4. The determination of the two types of undertakings under clause 20 is sought to be made on the basis of the assets of the undertakings. Perhaps the M.I.C. Report's draft Bill formed the background which guided Government to think of such a proposition in formulating the present Bill. But *prima facie* it seems to me to be irrational and incongruous to depend upon such a constantly varying factor in industry as "assets". For example, either for purposes of sub-clause (a) or (b) under clause 20, how can we say that an undertaking today having just the minimum qualifying assets will continue to remain so after an year. To say that only in those years when the assets exceed the limits the undertakings will come under the provisions of the Chapter, and for those years they do not so exceed they remain outside the operation of this law, is, to my mind, to create complete fiasco for the administration as well as for the industry itself.

5. Secondly, an undertaking with not less than one crore of rupees assets is described as a dominant undertaking. As we all know, cost of capital goods, land, construction etc. are ever on the increase year to year. Consequently, now-a-days many undertakings with an investment of a crore of rupees can at best be described as medium size industries. Is it our wish to rope in all those units including perhaps some of the units under the small-scale sector? If so, will it not retard the much desired expansion of industries and also the growth of the industrial economy? To cite an example, a couple of years ago, Government granted licences perhaps with a view to removing regional imbalances for setting up medium size spinning mills of 12,000 spindles capacity, chiefly for production of yarn, although it was recognised that they could never become economically sound units. The investment on each of these units was anything between Rs. 75 lacs and one crore and they are definitely now worth about Rs. 1 crore. Under the provisions of this Bill, are we to treat them as dominant undertaking? Further if we take the examples of a cement factory of 500 tonnes capacity, sugar factory of 500 tonnes capacity, a paper factory of 40 tonnes capacity, none of them can these days be set up with a capital less than a crore of rupees. Yet, this Bill will put them in the category of dominant undertakings because of their assets.

6. However that may be, even a raising of the limit of assets was not agreed to by the Joint Committee although it would have been no solution to the basic problem, because as I said earlier the principle of linking of assets is in itself bad and untenable.

7. The solution, according to me, seems to lie in making production the criterion for determination of the nature of an undertaking under sub-clause (a) and (b) of clause 20 of Chapter III. By this method, we will be achieving the purpose but through a rational way. Therefore, I strongly feel that "production" and not "assets" should have been the criterion in Clause 20. I shall amplify this.

8. If we are to make the broad classification of industry as a whole into (a) capital intensive industries, and (b) production intensive industries, assets cannot provide the real base. The capital intensive industries like heavy engineering goods, petrochemical industries, metal industries, all of which need heavy capital investment, have a capital/production ratio of only 1 : 1 or sometimes even less at 1 : 0.75. On the other hand, production intensive industries like drugs, pharmaceuticals, cosmetics

and many other consumer goods of daily use, have a capital/production ratio of 1 : 2 or even 1 : 3. Even applying this test, therefore, the linking of assets for our definition fails, and if we still persist on the idea of retaining assets, I am afraid it will be only at the expense of capital intensive industries which will receive incalculable harm for further growth.

9. Moreover, in industry assets as such have no economic connotation till they are channelised into various activities. Idle assets mean blocking up of capital without yielding reasonable return in the shape of money, at which stage they have no practical trade-in value for the holder. But on being activised and brought into economic interplay, they put economic power in the hands of its owner. Production of goods, their sale and the profits are the end objective of any investment in assets while accretion of assets, be it land or buildings or machinery or raw materials, or transport vehicles and so on, is not the end in itself in industry. Profits accruing out of production help to enhance the economic power in the hands of an industrialist because obviously then alone he will be in a position to expand or diversify his activity in order to gain more control over the market economy and also to gain more and more profits. Therefore, the more the production the more is the economic power in the hands of a person. In other words, concentration of economic power results which it is the object of this enactment to curb. Therefore, production/turnover is the crux of all industrial activity, be it investment or managerial skill or organizational ability or publicity drive. Therefore, production is one and the only criterion best suited for purposes of this clause 20.

10. The other point on which I wish to express my own view is on the manner in which "inter-connected undertakings" is defined under clause 2 of the Bill. This is spreading the net too wide and far and applying the brake suddenly. The adventure of industrial entrepreneurship may receive a severe jolt and may gradually shrink. Under the present industrial policy dispensation, it is no stigma for a person to be associated with a number of business ventures, in the capacity of a partner, financer, director, shareholder, adviser and so on. In most cases, it is for their special acumen that some persons are associated with several firms at the same time. The restrictions sought to be imposed would only confine talent and positively harm the growth of industry and new entrepreneurship. While trying to restrict monopolistic practices or the concentration of economic power, there is no reason to destroy and deprive talent of playing its legitimate role in the building and expansion of industry in the country. Therefore, the definition needs to be drastically changed and unless a major financial interest vests in individual persons, their association in any other manner should not be subjected to the provisions of this definition under clause 2.

S. R. DAMANI

II

This Bill which seeks to further regulate the growth of the corporate sector in public interest must, I think, be viewed by reference to three important criteria:

Firstly, does it help, consistent with protecting and promoting the large interests of society, in generating the right kind of condi-

tions for the display of energy by those in charge of company affairs to compete in the national and international markets?

Secondly, will the Bill assist transformation of the Indian economy to one of increased strength and greater stability?

Thirdly, has it taken note of the impact which applied science has on industry, and the revolution it has effected in the industrial organisation, management and technology in advanced countries, a revolution which cannot be stopped overtaking India as well?

2. In other words, there is need for a clear understanding of the economic forces in operation to bring into focus the issues, which the Bill, as modified by the majority of the Joint Committee, raises. No one can seriously put forward the argument that the Indian economy is developing under *laissez faire* conditions. Under various statutes, the Central Government has already powers to regulate the setting up or expansion of undertakings. Another important point which has to be kept in mind is that no one has objectively proved that private monopoly as such exists in our country today, whatever may be the position in the public sector.

3. Having said this I must add here straightaway that I am not against the establishment of a Monopolies Commission which can keep a watch to ensure that restrictive trade practices do not emerge. At the same time, it will be dangerous to equate the size of a company or its output with monopoly.

4. In this connection, it is very relevant to take into account the spectacular and qualitative change that has taken place in the international economy since the end of the Second World War. There has been a vast growth of a whole new phenomenon called multi-national or trans-national companies which number about 200 or so, but the value of whose production probably now exceeds more than $250 billion or Rs. 1,875 abja per annum, which is about equal to the total volume of world trade. Further, in almost all developed countries a number of mergers is taking place, and these mergers are not in the nature of the big swallowing up the smaller for predatory reasons. They arise out of compulsions of research and technology and of better methods of production and sale.

5. On the other hand, companies in private hands in India, the biggest of them, as is well known, are nowhere near the "giants" in advanced developed countries even allowing for the large differences in GNP between our economy and theirs. My short point is that if Indian industry is to have a competitive thrust it has to increasingly depend on research and development. Therefore, it is absolutely necessary that individual companies should grow in size and competence. Let me add here again by way of abundant caution that a Monopolies Commission, which I am in favour, can keep a watch on the restrictive trade practices of these growing companies in the interest of the welfare of the community as a whole.

6. I cannot help feeling that by introducing the slogan of concentration of economic power which means all kinds of things to different kinds of people as a Chapter in the Bill, the whole piece has encouraged irrational fears, and has obscured the objective criteria to be applied for anti-social

practices that require to be watched and curbed by the Monopolies Commission. Political considerations cannot by any means be a healthy influence for the development of the economy or of the industrial sector. If economic and industrial growth has to take place, as it must, then neither economic realities should be forgotten, nor the right economic policies neglected. The bogey of concentration of economic power will do incalculable harm to the country's industrial development and exports.

7. It is against this broad background, I will now discuss the more important clauses of the Bill with which I am not in agreement in their present form.

(ii)

8. I will first take up Chapter III of the Bill which deals with concentration of economic power, and then deal with a few definitions in clause 2 and the provisions of clause 3 which exempt Government companies from the Bill.

9. Chapter III imposes restrictions on the expansion of some undertakings, establishment of new undertakings, mergers, amalgamations, etc. The object of the Bill ostensibly is to regulate monopolies and so-called concentration of economic power. Monopoly in the accepted sense of the term implies a deliberate attempt on the part of industries to combine with a view to restricting competitive forces in the market and having a price structure, based on various devices like manipulation of production, prices, etc. But where the Bill goes wrong is that it mixes up considerations of monopoly practices and concentration of economic power.

10. As I have already said concentration of economic power is itself a vague concept. It would seem that it has been identified with undertakings which are deemed to be big, and as a result new fetters are sought to be placed on the expansion and diversification of such undertakings. It is worthwhile repeating over and over again that mere bigness is not monopoly nor is it concentration of economic power. The Monopolies Inquiry Commission have laid stress that it would not be right at the present stage of our industrial development to place any curbs on diversification that may result in slowing of the pace of development.

11. Large companies and large scale production are essential to secure economies. Optimum efficiency of operation demands large plants, costly research and highly developed marketing arrangements. Large scale units are necessary to be able to raise the necessary capital, to take risks, to improve technical efficiency and competitive strength in international markets and to increase exports, which are so vital to our economy. Only big concerns will be able to develop new markets and create demand for our products. They alone will be in a position to devote efforts to research and adoption of new managerial techniques, command better financial resources, and have better opportunities and ability to secure foreign collaboration.

12. In view of the great harm likely to be caused to the growth and functioning of industries, as a result of the provisions of Chapter III, I am of the opinion that this Chapter should be deleted. However, in view of the majority decision to retain the Chapter, it is at least reasonable to provide that the companies to which this Chapter would apply are really big enough to be considered as falling within the mischief of con-

centration of economic power. The value of assets of an undertaking to which the provisions of Chapter III will apply should, therefore, be raised to at least Rs. 50 crores for a group of inter-connected undertakings and to Rs. 5 crores for a dominant undertaking. I would like to make it clear here that I am not at all happy with even the compromise suggestion that I have made.

(iii)

13. Under clause 2 of the definition section, my first point is in regard to the definition of "dominant undertaking". The criterion for ascertaining whether one-third of the total goods of a particular description are produced or distributed by any undertaking to be deemed a dominant undertaking will be with reference to the whole of India or any substantial part thereof. Even though this is an improvement over the original provision, still the term "substantial part" is vague and may be differently interpreted by different persons. The area should be specifically defined and the whole country should be taken as a unit. The words "or any substantial part thereof" should be omitted.

14. The definition of "dominant undertaking" is very wide otherwise also, and large powers have been reserved for Government under the Explanation to prescribe certain matters. Where goods of any description are the subject of production, supply, distribution, etc., every reference in the Act to such goods will be construed as a reference to any of those forms of production, supply, distribution, etc. whether taken separately or together or in such groups as may be prescribed. It is not clear whether the term "different forms of production" would cover the same description of goods if the processes used to manufacture the same are different. For instance, synthetic yarn manufactured by acetate process or viscose process may be taken separately. Similarly, all kinds of textile materials could be separately classified. Even one article such as sarees produced differently could be separately treated. In such cases though the production of an undertaking may be much less than one-third of the total production of the goods of a particular description, yet the undertaking would be covered by the definition of "dominant undertaking". This is unreasonable.

15. Again, under Explanation III, it is provided that for the purpose of determining whether any undertaking is producing or providing one-third of any goods or services, any of the following criteria of value, cost, price, quantity or capacity, of the goods or services, or the number of workers employed etc., may be adopted. Thus, any article can be treated differently according to any one criterion and it will also not be known what criterion will be adopted. The definition of "dominant undertaking" is thus likely to create a very difficult situation, and Explanations II and III should be deleted.

16. The next definition which requires improvement relates to "inter-connected undertakings". The Joint Committee has made it most stringent by providing that if "one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of sub-clauses (i) to (vi)", then the undertakings will be inter-connected. This will indefinitely extend the chain of inter-connected undertakings, and it will be very difficult for an undertaking to know whether it comes within the mischief of the definition or not.

17. Also, it has been provided that where the undertakings are owned by firms with one or more common partners, the firms will be inter-connected. The question whether two undertakings are inter-connected should depend on the fact whether there is unified control or direction of the two undertakings. As it reasonable to provide that if an individual or a partner of a firm has some shares and/or some control in another firm, the other firm should be deemed as inter-connected? Unless one has a reasonably large interest of some kind in the other undertaking, such other undertaking should not be deemed to be inter-connected.

18. In the definition of monopolistic undertaking, the Joint Committee has provided that if an undertaking with not more than two other independent undertakings, supplies or distributes not less than one-half of the total goods of any description, each of such undertakings will be deemed to be a monopolistic undertaking. According to me each of such undertakings should be considered a monopolistic undertaking only if its own production exceeds 20 per cent of the goods of all description produced in India.

(iv)

19. Clause 3 provides that the Act shall not apply to Government companies. There is a strong case for bringing the public sector within the purview of the monopolies legislation. Monopoly in the proper sense of the term is characterised by exclusiveness, privileges, arbitrariness and excessive power which are all detrimental to the best interests of the community. And, more than in the private sector, monopolies under the public sector are likely to have all these characteristic attributes. The Monopolies Commission also had suggested that the regulatory provisions should apply equally to both public and private sectors. I am of the opinion that a public sector undertaking which works in competition with a private sector undertaking in respect of production of any goods or rendering of services should be covered by the provisions of the Act, and its production and services must be taken into account in the totality of production of goods and services.

BABUBHAI M. CHINAI

III

Though the present Bill to curb monopolistic growth and restrictive trade practices is a step in the right direction, I am not very enthusiastic about it. A stray attempt or a pious statute alone will not alter the situation unless the Government as a whole become committed to the philosophy and the object underlying this move. The Government should make up its mind on the basic issue whether concentration of economic power is to be curbed or not. Once they take a decision that it is to be curbed, they should go all out for it. Half-hearted support without conviction on the basic issue is bound to end in a miserable failure. Past experience in the field of nationalisation has proved this in ample measure.

Obviously the main problem is concentration of economic power; monopolistic and restrictive trade practices are only "functions" of such concentration. The legislative measure is aimed at to curb these func-

tions only. To treat the symptoms without taking any steps to prevent and to cure the disease will do no good. The financial policy of the Government and the planning in particular for the last 17 years have been mainly responsible for the concentration of economic power in this country. Concentration has taken place in terms of individuals, groups or regions. Unless the economic planning and thinking on the part of the Government are re-oriented and re-defined to achieve the objectives, any amount of pious statutes will not do the miracle. The Government should be clear in its objective, sincere in its approach and strong in its will to exercise the power without fear or favour when such exercise is warranted. Addition of one more statute will not be of much use unless the Government is willing to exercise the power vested to it and allow the machinery created to serve the purpose.

The present Bill should be followed and strengthened by other measures, legislative and executive, to prevent and curb concentration of economic power. Whether Government in its present composition and position are prepared for it is a big question.

NEW DELHI; ERA SEZHIYAN,
February 18, 1969.

IV

The Monopolies and Restrictive Trade Practices Bill seeks to control:

(i) Concentration of economic power;
(ii) Monopolistic Trade Practices;
(iii) Restrictive Trade Practices.

The restrictions prescribed for checking the concentration of economic power apply to undertakings referred to in Chapter III, Part A, clause 20. Some of the top commercial Banks in the country have undoubtedly assets of over Rs. 20 crores, but none of them can be considered as an inter-connected undertaking of any Group, the total assets of the companies under whose control exceed Rs. 20 crores, because the Banking Regulation Act, 1949 restricts the voting power of a shareholder to 1 per cent only of the total shareholdings irrespective of the shares held. This fact was mentioned by the Monopolies Enquiry Commission. The control hitherto exercised by a particular industrialist in certain important Banks by taking leading position in the Board of Directors is no longer possible in view of the provisions of the Banking Laws (Amendment) Act, 1968 recently enacted. Coming now to the specific measures of restrictions sought to be imposed by the Monopolies Bill for curbing concentration of economic power, they are:

1. Substantial expansion of undertakings
2. Establishment of new undertakings
3. Mergers, amalgamations and take-over
4. Inter-locking of directorships.

(1) A Bank's business expands mainly with the growth of deposits and opening of new Branches. It is in the interest of the economy for bank-

ing companies to expand even in small towns and villages. Substantial expansion is possible only by opening of new branches. Under the Banking Regulation Act, 1949 no bank can open a new branch without obtaining the prior permission of the Reserve Bank. Therefore, it would be a mere duplication to subject expansion of banks or opening of new branches by them to the restrictions provided for in the Monopolies Bill.

(2) The establishment of any new undertaking other than the new branch of a bank is not possible for a banking company under the law. It has been mentioned above that opening of new branches is subject to the permission of the Reserve Bank of India.

(3) Proposals for mergers and amalgamations of banking companies are also subject to sanctioning of a scheme by the Reserve Bank of India. Therefore, to bring this also under the control of the Monopolies Act would be a mere duplication.

(4) Regarding inter-locking of directorships the Banking Regulation Act, 1949 imposes certain restrictions under Section 16. In addition, by Section 3 of the Banking Laws (Amendment) Act, 1968, most stringent restrictions have been prescribed regarding the composition of the majority of the Board of Directors of a banking company and also making it compulsory for every banking company to have a full-time professionally qualified chairman. The Reserve Bank have full powers to approve of the appointments of the Chairman and Board of Directors and to remove any of them. In view of these circumstances, it is inconceivable what further restrictions can be put under the Monopolies Bill to prevent interlocking of directorships. The Banking Laws (Amendment) Act, 1968 also imposes very stringent restrictions regarding the grant of loans and advances to any firm or company in which a director may be interested. The Reserve Bank has also ample powers to inspect books at any time, issue any directives about banking policy and even interfere in individual loan transactions. In view of these provisions, it cannot be conceived how there can be concentration of economic power with banking companies rendering banking as a service to the detriment of public interest for which additional control should be imposed by the Monopolies Bill.

2. Coming now to the Monopolistic Trade Practices, in order to enable a company to indulge in monopolistic trade practices, it must be a dominant undertaking. According to the available statistics, apart from the State Bank of India, no individual bank has more than 10 per cent share of the banking business in India rendering it impossible for any one of them to set up as a monopolist. Among the definitions of Monopolistic Trade Practices as per clause 2(i) of the Monopolies Bill, the most important item is maintaining prices at unreasonable level by limiting supply, etc. The price charged by the banking industry is interest on loans which is related to the bank rate as fixed by the Reserve Bank of India. There is no scope for any bank to charge more than the prevailing rate of interest. As no bank is in a dominant position the question of its unreasonably preventing or lessening competition cannot arise.

3. Restrictive Trade Practice as defined in clause 2(o) of the Monopolies Bill also appears equally irrelevant so far as the banking companies are concerned. Under the vigilant eye of the Reserve Bank of India and the over-riding power vested in it, is inconceivable that two or more

banks in India could combine to adopt a restrictive trade practice to prevent, distort or restrict competition amongst themselves. Even if this was theoretically possible, far quicker and more effective remedy would be available by making a reference to the Reserve Bank of India to issue directions under the Banking Laws (Amendment) Act, 1968 to stop such practice rather than refer the matter to the Monopolies Commission acting as a Restrictive Trade Practices Court to determine the matter in a judicial manner and issue appropriate orders.

In view of these reasons, I strongly feel that "Banking" should be removed from the purview of this Bill.

Besides, the definition (g) clause (2) regarding "inter-connected undertakings" as revised by the Select Committee is, in my humble opinion, cumbersome, confusing and indefinite and hence unworkable. I am afraid, it may not stand constitutional scrutiny. This should, therefore, be replaced by a simple, definite and workable definition.

AWADHESHWAR PRASAD SINHA.

NEW DELHI;
February 19, 1969.

V

The Monopolies and Restrictive Trade Practices Bill was stated to have been introduced based on the recommendations of the Monopolies Inquiry Commission headed by the then Justice K. C. Das Gupta. The scope of the Bill introduced in the Parliament has become very much wider than the recommendations in the Monopolies Commission Report. The Bill would have been very much more workable if the scope had been confined to cheking monopolistic trade practices and restrictive trade practices but greater attention has been devoted to curbing the so-called concentration of economic power and as a result Chapter III has been introduced when there was no such provision at least in this form or with such wide ramification in the draft Bill set out in the Monopolies Inquiry Commission Report. There was objection with regard to some of the definitions as set out in the Bill as introduced. One or two objections have been met by improving the definition of "monopolistic undertaking". But some others remain as bad as before. But the definition of "inter-connected undertakings" has been made so wide that in my opinion it has become unworkable and not possible to fathom the wide implication. I set out the contents of a letter that I had written for the information of the Minister and the Members of the Committee, when the present definition as in the recommendations was adopted one evening, as Annexure.

If the permutation and combination of different clauses in the definition are taken into account it may be impossible for one to know which undertakings are inter-connected. Moreover, even undertakings of rivals who are opposed to the business of a particular undertaking may also come within the definition. Both for Dominant Undertakings and Mono-

polistic Undertakings the production suggested to be taken into account in arriving at figures of one-third and one-half of the total production, certain quantities have been excluded which in certain cases may amount to very large quantities. Any way, I feel that the definition of inter-connected undertakings, if not of anything else, require very close attention and the original definition in the Bill as introduced, though very wide, was atleast capable of being worked out, and any one required to fill up any form with particulars could know what he had to do. But the present definition has made that task impossible.

For the last 2/3 years there has been recession in the country and various industries were and some still are in doldrums. There are some signs of revival in some of the industries. What is needed in the country is production and more production. That alone can solve a lot of difficulties that the country is facing. On account of the impetus given for a period of about 6-7 years from 1955 to 1962-63, a very large number of industries have come up and a large number of them has been started by persons or families which would have been impossible for them to do but for the help and support given by the Government institutions. Most of the articles have come to be produced and be available in the country, but the present Bill is likely to retard progress and be the cause of delaying, if not stopping the setting up of further industries and otherwise stand in the way of progress.

The Bill as emerged from the Joint Select Committee has introduced certain very important changes which have made the Bill very much more drastic and objectionable. One of them is already indicated—definition of Inter-connected Undertakings. I set out below the names of 4 partners each in eleven partnership firms to show the absurdity of the definition:—

(1) Shri Dayabhai Patel
Mrs. Patel
Choudhary Nitiraj Singh
Shri S. R. Damani

(2) Shri S. R. Damani
Shri Dharia
Shri Chandrasekhar
Shri N. Verma

(3) Shri N. Verma
Shri S. N. Mandal
Mrs. B. Choudhary
Shri Valmiki Chaudhary

(4) Shri Valmiki Chaudhary
Shri Hem Barua
Shri Damodaran
Shri B. Bhagwati

(5) Shri B. Bhagwati
Shri B. Chinai
Shri A. P. Sinha
Shri T. N. Singh

(6) Shri T. N. Singh
Dr. Anup Singh
Shri Onkarlal Bohra
Shri C. Dass

(7) Shri C. Dass
Shri Achal Singh
Shri Anantrao Patil
Shri G. S. Reddi

(8) Shri G. S. Reddi
Shri A. S. Saigal
Shri S. C. Samanta
Shri V. Sambasivam

(9) Shri V. Sambasivam
Shri K. D. Tripathi
Shri Raghunath Reddi
Smt. Shanta Vashist

(10) Smt. Shanta Vashist
Shri F. A. Ahmed
Shri C. C. Desai
Shri Bharat Singh Chauhan.

(11) Shri Bharat S. Chauhan
Shri S. K. Dutt
Shri Ganguli
Mrs. Alva.

It will be noticed that there is one common partner in firms 1 and 2, 2 and 3 and one common partner in firms 3 and 4 and so on, but there is no common partner in firm 1 with 3 or with 4 or any of the subsequent firms, but because there is one common partner in every two by virtue of the new definition introduced, all these 11 firms will become inter-connected although there is no manner of connection or privity between firms 1 and 3 onwards nor between 2 and 4, 5 and 6 onwards. Barring the immediate two adjacent to each other all the other firms are composed of absolutely separate partners and I have mentioned the names of honourable Members of Parliament of the select committee so that the absurdity may be apparent.

A new clause now numbered 26 has been introduced requiring every undertaking, to which provision of Part A of Chapter III apply, to get itself registered with the Central Government within a certain period and if they fail to do so they will be subject to various penalties. This kind of requirement does not exist in any of the existing laws of England or America from which a number of ideas have been borrowed. In fact, it was admitted by the Ministers concerned that such a provision does not exist anywhere in the world. This clause or a similar clause does not find place in the draft Bill set out in the Monopolies Commission Report of Shri K. C. Das Gupta. Nor was it there in the Bill as introduced in the Rajya Sabha, nor was the amendment proposed on behalf of the Government, yet the Ministry had no hesitation in accepting the private amendment without any discussion. It is wholly unnecessary burden that is being thrown on a large number of firms and undertakings and unnecessary work is being forced on them causing enormous expenditure and instead of the Act being made applicable and being used for curbing restrictive trade practices or monopolistic trade practices which was and should have been the real object of the Bill, energy will be diverted and spent in prosecuting people who may fail to register. The big firms whom it was intended by government and the sponsors to control will have difficulty but they may be able to meet the same but it will be the small entrepreneurs coming within the definition of "Dominant Undertakings" who will be in trouble and put to unnecessary expenditure. The registration also seems to be unnecessary. If and when any party applies to the government for any new undertaking or for expansion etc. forms will have to be necessarily filled up which will indicate whether or not they come within the mischief of any of these clauses. Another point is that how is an industrialist to know what basis government was going to adopt to find out the assets or whether it is dominant or not or whether it is a monopoly or not specially within the period within which they are required to register.

The clause 37 as it was in the Bill has been replaced entirely by a new clause moved by Shri Chandrasekhar and now numbered 38 and which was accepted on behalf of the Government without much consideration on a mere statement that the same had been borrowed from the British Act and the beauty of this was that this new draft has been accepted on behalf of the Government in spite of opposition and objection by some members of the Committee who pointed out that it was contrary to the whole scheme that had been adopted in the Bill as also contrary to some of the clauses earlier adopted. It does not exist in the form in the British Act from which a number of ideas appears to have been borrowed. It appears in another British Act of 1956 where the powers have been given not to the Commission but to the Monopolies Court presided over by High Court Judges. All agreements which may contain any kind of restriction are required to be registered. The purposes of registration was that they will be examined by the Commission and if on such examination any agreement be found to be objectionable the Commission will be entitled to pass orders directing the practices to be discontinued or there shall be made necessary modification in the agreement and such provision exists in the existing clause 36 of the Bill, but the concept that has been introduced by the new clauses which has been thoughtlessly accepted on behalf of the government is just the contrary. All agreements will be regarded

as bad unless the commission comes to certain positive conclusions as in the different sub-clauses of present clause 38 as accepted on behalf of the government in spite of objection by a certain number of members as also on behalf of experts attending the Joint Select Committee meeting.

There are a number of existing Acts, Orders and Regulations which, if properly applied would serve the purpose which is needed to be performed and carried out by the present Bill, namely;

1. The Industries (Development & Regulation) Act, 1951
2. The Companies Act, 1956
3. The Indian Patents Act
4. Essential Commodities Act, 1955
5. Capital Issues Control Act, 1947
6. Foreign Exchange Regulation Act, 1947
7. Import and Export Control Act, 1947.

and Regulations regarding Exports and Imports, Capital Issues etc. are in force. But the Restrictive Trade Practices and Monopolistic Trade Practices which should have been the main object of being controlled and or curbed by the present legislation attention should have been focussed on curbing monopolistic trade practices or restrictive trade practices wherever they may be found to exist. But instead of concentrating on this purpose which would have been useful some of our friends have been very active in trying to hit the so called big industrialists or big business houses and to my mind so much purposeful use which could have been made of the Bill have been mixed up with so many ideas that one does not know how it will work and whether proper attention can possibly be given to them.

In my opinion Chapter III should not have found place in this Bill and in any event some of the provisions there like division of ownership or transfer of ownership should not have found place at all. It cannot possibly work and in an attempt to do too much, nothing useful perhaps will be done by this Bill.

Chapter III provides that Part A shall apply to certain undertakings if the assets including the assets of inter-connected undertakings is not less than 20 crores. It will also apply to a 'dominant' undertaking if its assets together with the assets of inter-connected undertakings are not less than 1 crore. Various figures were suggested in place of 20 crores and 1 crore. The figure of 50 crores was suggested in place of 20 crores and 5 crores in place of 1 crore. Ultimately it was suggested to the Committee that the figures of 20 crores might be allowed to remain as it is, but this Part should not apply to dominant undertakings unless the "dominant" undertakings with or without inter-connected undertakings had assets of not less than 5 crores. The reasons were that because of the definition of "assets" as also of the definition of "inter-connected" undertakings most of the so called big business houses will be included and hit by the figure whether it is 20 crores or 50 crores. But if the other figure is also kept at 1 crore, many new and small entrepreneurs will also be included, as no new important undertaking producing anything new can

likely be set up at less than 1 crore and all new undertakings producing new articles will automatically become dominant undertakings.

I am, therefore, of opinion that the amount of 1 crore, sub-clause (b) of present clause 20, should be raised to atleast 5 crores. The other provisions regarding expansion of undertakings and establishment of new undertakings as in present clauses 21 and 22 should all have been left to be taken care of by the existing provisions in Industries (Development & Regulations) Act, 1951.

Part B providing for division of undertakings is not likely to be of any practical use and will simply scare away many persons.

One thing more: by clause 3, this Act has been made inapplicable to various undertakings owned or controlled by Government. But there is no reason why "restrictive trade practices" and "monopolistic trade practices" if indulged in by any undertaking owned or controlled even by Government should not be expected to comply with the provisions in this Bill and the Commission should have the same powers in respect of monopolistic and restrictive trade practice if indulged in by Companies and undertakings referred to in clause 3.

NEW DELHI;
February 24, 1969.

P. D. HIMATSINGKA
VALMIKI CHOUDHARY

ANNEXURE

Madam Chairman,

In connection with the amended definition of "Inter-connected Undertakings" as in clause 2, sub-clause (g) as adopted on 28th October, 1968, the same has become very wide in spite of a large number of members not having realised it. There was every weighty evidence adduced by various witnesses who came to depose before the Committee, who wanted the definition of "Inter-connected Undertakings" to be limited. When you were presiding, objection was taken by some members as to why "Hindu Undivided family" be included as a sub-clause (iii) of (g) when persons of other denominations were not included in that definition. The consideration was then postponed for the Minister to consider the same. Now to meet that objection the Minister in charge of the Bill removed the word "Hindu Undivided family" from there and introduced an explanation with that intention to rope in persons of other denominations also, and the word "relatives" has been used in the Explanation. Moreover, one sub-clause as sub-clause (vii) to the definition in (g) has also been added which was not in the original Bill. The definition as in the Bill introduced was bad enough and was very wide and was suggested to be reduced in its implications by various witnesses, but this addition of the word "relative" and addition of sub-clause (vii) has made the clause wholly unworkable and beyond the comprehension of anyone who will be expected to file information as required in clause 22 and various other clauses.

I gave an instance of how the sub-clause (ii) read with sub-clause (vii) and the illustrations given would work out in practice. I send herewith names of 4 partners in each of 11 firms as set out in a separate

sheet, by way of illustration. You will notice that there is one common partner in firms No. 1 and 2. Similarly there is one common partner in firms 2 and 3 and one common partner in firms 3 and 4 and so on, but there is no common partner in firm No. 1 with No. 3 or 4 or the subsequent firms No. 5, 6, 7, 8, 9, 10 or 11. But because there is one common partner in every two firms, by virtue of the new addition made by the Minister of State, all these 11 firms will become interconnected and God alone knows how the partners of firm No. 1 are to know about the partners of any of the firm Nos. 3 to 11. Similarly how the partners of firm No. 2 to know about firms 4 to 11 and so on. If you take the same illustration and apply the possible permutations and combinations by virtue of explanation sub-clause (b) I do not know how many possible firms and|or companies can possibly come within the definition of "Interconnected Undertakings". I raised this question and suggested reconsideration on the 29th October, 1968. No answer was forthcoming as to whether there was any flaw in my criticism except that the clause having been accepted the previous day should not be reopened. I am not anxious to reopen anything but as I felt and still feel that the definition has become unworkable and absurd, and therefore, fit to be re-examined, if criticism be valid.

I am writing this letter to put on record what I feel and still hope that the Minister of State in charge of the Bill should consider in consultation with the Committee the question whether or not he should have the definition reconsidered. As it is, I do not know what the persons who will be called upon to apply the Act, or to interpret the same in court call us who are parties to the definition. The Bill should be such as can be reasonably understood, applied, and|or enforced, but if it is made unworkable one feels his duty to point out the same leaving it to the sense of the Minister in charge and the Committee to decide. When the idea of a Joint family was put in the definition in the draft Bill that indicated certain coherent group of persons having common interest, but "relative" may be at daggers drawn and may be fighting with each other and yet by virtue of being "relatives" within the meaning of the Companies Act, the business carried on by them although separately without any connection whatsoever will also come within the mischief of the definition and the undertaking seeking to apply under any of the clauses for expansion or new undertakings etc., will have no manner of means to furnish the particulars. The definition of "relatives" as in the Companies Act had a different purpose, and there it is not difficult in its application.

NEW DELHI;
October 30, 1969

Yours faithfully,
P. D. HIMATSINGKA

---

(1) Shri Dayabhai Patel
Mrs. Patel
Chaudhary Nitiraj Singh
Shri S. R. Damani

(2) Shri S. R. Damani
Shri Dharia

Shri Chandrasekhar
Shri N. Verma

(3) Shri N. Verma
Shri S. N. Mandal
Mrs. B. Choudhary
Shri Valmiki Chaudhary

(4) Shri Valmiki Chaudhary
Shri Hem Barua
Shri Damodaran
Shri B. Bhagwati

(5) Shri B. Bhagwati
Shri B. Chinai
Shri A. P. Sinha
Shri T. N. Singh

(6) Shri T. N. Singh
Dr. Anup Singh
Shri Onkarlal Bohra
Shri C. Dass

(7) Shri C. Dass
Shri Achal Singh
Shri Anantrao Patil
Shri G. S. Reddi

(8) Shri G. S. Reddi
Shri A. S. Saigal
Shri S. C. Samanta
Shri V. Sibasivam

(9) Shri V. Sibasivam
Shri K. D. Tripathi
Shri Raghunath Reddi
Smt. Shanta Vasist

(10) Smt. Shanta Vasist
Shri F. A. Ahmed
Shri C. C. Desai
Shri Bharat Singh Chauhan

(11) Shri Bharat Singh Chauhan
Shri S. K. Dutt
Shri Ganguli
Shrimati Alva

VI

प्रवर समिति के प्रतिवेदन के सम्बन्ध में मैं अपनी निम्न सम्मति दर्ज करना चाहता हूं :—

एकाधिकार तथा निर्बन्धनकारी व्यापार प्रथा विधेयक, 1967 से सम्बन्धित संयुक्त प्रवर समिति द्वारा उक्त विधेयक का संशोधन होने पर भी, मैं संतुष्ट नहीं हूं। मेरे असंतोष का कारण है कि वर्तमान विधेयक में बीमारी के कुछ लक्षण का इलाज बतलाया गया है। बीमारी क कारण को दूर करने का प्रयास नहीं के बराबर हुआ है। जरूरत थी आर्थिक शक्ति के केन्द्रीयकरण को रोकने की न कि सिर्फ आर्थिक शक्ति के केन्द्रीयकरण से उत्पन्न अशुभ लक्षण को रोकने की। हिन्दुस्तान की बेरोजगारी प्राकृतिक साधन की सुलभता और पूंजी की कमी की स्थिति में, कुछ थोड़े-बड़े कलकारखानों में पूंजी का एकत्रीकरण, बारूद में आग लगाने के समान है। भारतीय संविधान की मांग और उसके निर्देशक आदेश की अवज्ञा की गयी है। संविधान के निर्देशन आदेश की धारा 39 (ग) के आधार पर इस विधेयक की रचना की गयी है। होना चाहिये था, पहले धन के साधन का न्यायपूर्ण बटवारा। इस प्रकार का निर्देश संविधान के 39 (ख) में दिया हुआ है। अगर 39 (ख) का निर्देश पालन किया जाता तो 39 (ग) के मुताबिक निकट भविष्य में इस तरह के विधेयक को लाने की जरूरत ही नहीं पड़ती। चूंकि 39 (ख) के आदेश पालन से सरकार कतराती है, इसलिए लोगों की आंख में धूल झोंकने के लिये, सिर्फ 39 (ग) के मुताबिक यह विधेयक लाया गया है। जिस मंशा से यह विधेयक लाया गया है, वह इससे पूरी होने की नहीं हैं। निजी क्षेत्र की नाई, सरकारी क्षेत्र पर इस विधेयक का अनिवार्य तौर पर लागू नहीं होना, यह भी 39 (ग) के आदेश के खिलाफ है और संवैधानिक दृष्टि से पक्षपात-पूर्ण है। इस विधेयक की रचना जनता के हित की दृष्टि से नहीं, बल्कि सरकार के हित की दृष्टि से की गयी है।

भूपेन्द्र नारायण मंडल
24-2-69

नई दिल्ली;
फरवरी, 24, 1969

VII

The Bill bears the pompous name "Monopolies and Restrictive Trade Practices Bill". The name would make it appear that by enacting this Bill, the Government is determined to break up the existing monopolies and to prevent the further growth of monopolies.

The provisions of the Bill will achieve no such thing.

The Government only seeks to prohibit certain monopolistic trade practices. But the definition of the term "monopolistic" and "dominant" undertakings is such that only those that control 50 per cent or one-third of the total production in the country in any particular line will come under the purview of the Act. Today there is no such undertaking. Ways can always be found to get over this in future if any such undertaking comes into being.

If ever such an undertaking is found, all that the Government proposes is that it be enabled to put restrictions. It does not think that even when such an undertaking is indulging in such an anti-social act, it should be confiscated outright.

With regard to growth of monopolies, all that is proposed is that undertakings having assets of over 20 crores of rupees should notify the Government whenever it wants to make expansions which would result in increase of production by 25 per cent. In that case, the Central Government has the power to refuse permission.

This will not prevent the expansion. For instead of increasing production by 25 per cent at a time, the undertaking can expand in such

a way as to result in increase of something less than 25 per cent say 20 per cent or even 24 per cent. In this way it can expand limitlessly without having to seek Government's permission.

Finally the existence of concentration of economic power in the hands of 75 families has been well brought out with facts and figures by the Monopolies Commission. The Bill has no provision to attack them in any way.

The Bill is based on similar legislation in the U.S.A. Even that enactment in the U.S.A. has not prevented the continuous growth of monopolies. Here also this Bill will not prevent the growth of monopolies or really prevent monopolistic and restrictive practices.

NEW DELHI;
February 24, 1969.

R. UMANATH

VIII

If somebody gets the impression that government intends to break up the existing monopolies by means of the 'Monopolies and Restrictive Trade Practices Bill' then he is mistaken. The provisions of the Bill are not intended to break up the existing monopolies.

Of course, this measure is intended to be a modest attempt against the further growth of monopolies. So far, so good. As such, the Bill had to encounter opposition from a reactionary angle during the Select Committee stage. It is gratifying to note that such efforts did not succeed. But the fact remains that even in this Bill, there are many lacunae and loopholes which will come in handly for the vested interests in their effort to defeat the real purpose of the Bill.

According to the definition of the term 'Monopolistic' and 'Dominant' undertakings, only those that control 50 per cent or one-third of the total production in the country in any particular line will come under the purview of this Act. Today no such undertaking may exist. Thus most of those monopolies mentioned in the Monopolies Commission Report are conveniently left out. Even in future when many such undertakings come into being, they can find ways and means to get over the provisions of this Act.

In the case of such an undertaking, there is no provision for outright nationalisation. There are only provisions to put restrictions.

The government claims that this legislation is by and large based on similar legislations in UK, USA and Japan. It is a well known fact that with all such legislations, these countries have the biggest of monopolies in the world. In India too, if the basic economic policies followed till now are going to be pursued in future also, a legislation of this kind will not be able to prevent the growth of monopolies and restrictive trade practices.

NEW DELHI;
February 24, 1969.

P. K. VASUDEVAN NAIR
K. DAMODARAN

IX

As I listened to the views of witness after witness on the Monopolies and Restrictive Trade Practices Bill, 1967, I felt more and more convinced that while the proposed measure would be useful to an extent in dealing with cases of monopolies and unfair trade practices, it is not going to provide an effective remedy against concentration of economic power. In the preamble it is stated that the bill seeks "to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of restrictive trade practices and for matters connected therewith and incidental thereto". While I am generally satisfied that the amendments made by the Select Committee to provisions in other chapters will put a curb on monopolistic and restrictive trade practices, I think the amended Bill will hardly prevent or deter concentration of economic power in a few hands.

However, with regard to Chapter III relating to 'Concentration of Economic Power' I feel that despite the modifications made, the purpose in view would not be served. The initial mistake lies in combining in the same measure provisions both against monopolistic and restrictive trade practices and for deconcentration of economic power. Probably it would have been better to pass a separate law having as its principal objective de-concentration of economic power. By making it a part of the anti-monopolies bill certain inherent weaknesses have inevitably crept in as monopolies have been considered as synonymous with concentration of economic power in the hands of a few. But this is obviously not so, for there can be concentration of economic power and an unjust society might continue to flourish even though monopolies may be insignificant in number.

Mr. Dange who appeared before us as a witness was of the view that this Bill was not going to help as it would after all function in the existing economic structure of the country. I may not be in agreement with all the arguments that he advanced, but I find myself, after scrutiny of the amended bill, generally in agreement with him on this point. I am afraid that despite all the fanfare and the propaganda that has been carried on in favour of this measure, Government will not be in a position after its passing, to prevent concentration of economic power in a few hands. In a scheme of planned development in a mixed economy where private sector has been assigned an important role it will generally not be possible to prevent issue of licences to parties with resources and experience. The public sector in our scheme of planned development already suffers from serious handicaps in regard to management and personnel problems and technical know-how, heavy dependence on foreign aid and reluctance of many highly developed countries to cooperate with our public sector units and our limited foreign exchange resources inhibit rapid growth of the public sector. In the circumstances, despite its desire to curb growth of monopolies, Government might be compelled to issue licences for industries to those very persons in the private sector who enjoy great economic power to-day. Further, by stipulating that licences would be refused on the ground of their being "to the common detriment" has made orders of the Government in this regard justiciable and to that extent positive firm action might become more difficult. I am of the view that the provisions of Chapter III of the Bill which are intended to combat concen-

tration of economic power have not been incorporated after full thought in the context of a country adopting planned development in a mixed economy.

Article 39(b) of the Constitution envisages that the State shall in particular direct its policy towards securing "that the ownership or control of the material resources of the community are so distributed as best to subserve the common good". Unfortunately, according to me, we today do not possess an administrative machinery which can ensure implementation of such a policy. By incorporating chapter III along with the Bill which basically is meant to prevent monopolistic and unfair trade practices we are holding out hopes of establishing an egalitarian society with the aid of this measure which is just not going to happen. We have to do much more than merely preventing licensing of a few new concerns with the assistance of an impartial commission headed by people with judicial background and loaded with all kinds of work, including cases of monopolistic and unfair trade practices.

A policy of de-concentration of economic power will have to be energetically pursued by the Government and the administration. Also, it will require re-thinking of our entire strategy for economic development and foreign collaboration.

Further, I think the provision regarding division of undertakings which come under the provisions of chapter III is not practicable. I asked for examples of division of large undertakings in other countries where such laws exist and I could not get a single example of this kind. I have yet to come across a single instance of such division under any of the monopolies act in other countries. Whereas I am in agreement with the objectives of chapter III, I find that the chapter as it is, will only create hopes which cannot be realised and ultimately the Government while administering this measure will be accused of being hyprocritical.

I made certain modest efforts to strengthen the provisions under this chapter to the best of my capacity. Certain substantial amendments have been made. But even as it has emerged, I do not feel satisfied and have therefore thought it necessary to record my views.

Perhaps one way to give effect to the objectives of deconcentration of economic power and achievement of an egalitarian society would be to pass a separate and more comprehensive law on the subject instead of tying it down to an anti-monopolies Bill and entrusting its implementation to a monopolies commission. A very relevant question is why have licences been issued repeatedly to big business houses when Government could refuse such licences. I could hardly get any convincing answer except that such licences could be refused only at the risk of retarding industrial development. I am afraid without radically altering our industrial development strategy we can hardly prevent the process of concentration of economic power. I will not be surprised if in future the recommendations of the Monopolies Commission are used as a justification for issuing more licences to big business.

T. N. SINGH

NEW DELHI;

February 24, 1969.

X

I belong to a Party that believes in competition and is opposed to monopoly. In the Election Manifesto of the Swatantra Party in 1967 it is stated:

> "The Swatantra Party is opposed to all monopoly whether in the State or free sector, and will seek to re-establish competition wherever possible for the benefit of the consumer. Monopolies where tolerated will be subject to essential control....Where owing to temporary scarcity of certain vital resources regulation becomes inevitable, there should be a quasi-judicial authority to indicate the necessary priorities and allocations."

It is against this background of support for anti-monopoly legislation that I look at the present Bill.

It is difficult to understand the anxiety and haste shown to rush this Bill in its present form. At several of the sittings the Minister-in-charge was not able to be present, his deputy who seems to be guiding spirit behind the measure was. A more fuller examination of such a complex measure was certainly necessary; for want of this changes in the drafting and Governments amendments kept on coming practically to the last day.

Hardly any serious effort was made to obtain evidence from witnesses from other countries who have experience of such legislation. How earnest and real this effort was can be seen from the fact that while several witnesses from abroad, businessmen and lawyers came to India to appear before another Select Committee on a Bill being piloted by the same Ministry, which had its sitting more or less at the same time, no enquiry was made of them whether they would like to tender evidence on the Monopolies Bill since they were in India and they had experience since witnesses from their countries had not been able to come before the Committee at its earlier meeting.

Nor was the Committee in a mood to hear about recent trend in industrial reorganisation in the U.K. The U.K. has set up an Industrial Reorganisation Corporation (IRC) with Government funds, with the object of bringing about mergers and amalgamations between companies in the Private Sector whose manufacturing activities are similar to one another.

Great Britain like our country is most anxious to increase her export trade and with the objective to join the European Common Market but due to opposition from France, had not been able to. Assuring that membership will be possible in course of time, Great Britain will have to face competition on an international level, to a very much larger extent than what they did previously. This means that British industrial effort should match that of world companies and this can only be achieved by mergers, amalgamations, etc. of various companies handling the same or similar products. It is recognised that considerable economies will be effected by mergers, such as, reduced overheads, a lowering of expenditure in Research and Development (much of which is duplicated at present), the rationalisation of the industry concerned and the bringing up to the surface all redundancies in staff. As is well-known, British industry is both out-dater by modern international standards and their labour force is en-

able to compete with similar labour on the Continent. Finally, mergers, will release funds for the purchase of up-to-date machinery, without which industry can never thrive.

As however companies in the Private Sector are loath to give up their own individuality, the U.K. Government has formed the IRC and charged them with the study of British industry and the desirability of initiating mergers between companies. The Directors of the IRC are appointed by Government and are mostly drawn from private industries.

In certain cases, in order to bring about a merger, the IRC loans funds (in one case as much as £20 million) which in effect is a loan from the Treasury for the object in view. One of the recent cases of merger, which received the blessings of the IRC, was that of General Electric Co., Ltd. and the Associated Electrical Industries, both individual giants in the electricity sphere in Great Britain. Even after the merger took place, the position of the GEC/AEI, amongst similar world companies, was about 7th or 8th on the list—two Japanese being larger. It is much more necessary for India also to think on these lines instead of the proposed Bill.

Only the other day the Congress President Shri Nijalingappa expresses himself strongly against Government monopolies (see 'Hindustan Standard' 18-2-1969):

> "It was immaterial what the public sector had produced and what the private sector had not produced. What was welcome and necessary was a high degree of competition between the two sectors".

Perhaps the most offensive aspect of the Bill is the exclusion of all companies and corporations owned by the State. I had urged from the day Committee started its work that the Committee should also look into the effect of Government monopolies on the development and growth of industry and the progress of the country but my pleadings were in vain. The Committee appeared to have been hand-picked with people with certain pre-conceived notions who would not hear of it. This exclusion takes away whatever merit there might have been in the measure since the only monopolies in India to-day happen to be Government enterprises. If anything, Government monopolies are more dangerous than any others because they combine industrial power with all government and police power. Their exclusion from the scope of the Bill makes nonsense of its claims to be an anti-monopolies measure. I had urged this from the day the Committee started its work but my plea was just not considered.

Even the Monopolies Inquiry Commission of 1965 had recommended, at page 186 of the Report, that State monopolies should be brought within the ambit of anti-monopolies legislation and within the control of the Monopolies Commission proposed to be set up. It is a pity that this recommendation of the Monopolies Inquiry Commission has been brushed aside in the Bill as recommended by the Select Committee.

The second measure blemish in the Bill is that the permanent Monopolies Commission proposed to be established is not an independent body but is dependent on the Government of the day whenever it so desires. The Commission should have been a quasi-judicial body and, in regard to its functioning, it should have been supreme, subject only to an appeal to the courts of law. The fact that it can be by-passed and its findings ignored

whenever Government so desires makes a mockery of this measure. A third aspect of the Bill which takes away whatever merit it might otherwise have had is that appeals to the Courts of law are limited in nature and are not unfettered as they should be. Hon'ble High Court of Madhya Pradesh in their judgment (Company Law Board *vs.* Jayajeerao Cotton Mills Ltd.) about the functioning of a similar board said: "the board did not apply its mind to the material before it and totally failed to take into account the very relevant material etc..Again in making the impunged order the Board was influenced by matters extraneous to section 237(b) (ii), namely those referred to while dealing with the third set of circumstances. It cannot therefore be held that the opinion formed by the Board in his case is in accordance with section 237(b) (ii). The impunged orders cannot be sustained and must be set aside." In the face of such experience, how is it possible to be satisfied when appeals to courts of law are limited in nature and not unfettered as they should be.

The last major feature that makes the Bill unacceptable to me in its present form is the inclusion of Chapter III which purports to deal with the "concentration of economic power". This Chapter arises from a confusion between monopoly and size. Size is not itself a bad thing. It is often a function of efficiency. There are economies of scale and economies of size and to deny ourselves the benefits of such economies to be antiquated and out of date. A corporation or a company is not a monopoly only because it is big so long as there are other enterprises competing with it. Size and monopoly are two entirely different things which may or may not coincide in any particular case. The failure to keep this distinction in mind vitiates Chapter III and therefore the whole Bill.

Concentration of economic and political power in the same hands is bad and should undoubted'y be discouraged. The way to do it is to keep economic and political power in separate hands and to maintain competitive free enterprise in the interest of the consumer. To-day, through a neglect these sound principles, political and economic power is concentrated in the hands of the politicians and bureaucrats in office. Chapter III does nothing to curb or limit their powers. On the contrary, by giving these clauses the power of life and death over a wide range of enterprises which are not monopolistic it strengthens the concentrations of economic and political power in few hands in New Delhi. In my view, the whole of Chapter III should be eliminated from this Bill, as it has no proper place in anti-monopoly legislation. I am sorry to see that neither the Bill as it was introduced in Parliament nor as it emerges from the Select Committee is in the nature of genuine anti-monopoly legislation which I would have wholeheartedly supported. On the contrary I regret that the Select Committee has not only failed to improve the Bill, in fact in many respects it emerges as more drastic and much more objectionable. For these reasons, I regret that I cannot associate with the majority of my colleagues in the Select Committee in commending this Bill to Parliament.

DAHYABHAI V. PATEL

NEW DELHI;
February 24, 1969.

XI

Though I was fundamentally in disagreement with many of the important provisions of the Monopolies and Restrictive Trade Practices Bill as it was introduced by Government in Parliament, I agreed to join the Joint Select Committee in the hope and expectation that in the calmer atmosphere of the committee, a saner and more non partisan view would be taken and the Bill would be amended so as to subserve its true purposes, namely, to curb or eradicate the monopolies and restrictive trade practices which hinder the growth of industrial development or which would hamper free competition so essential to safeguard the interests of the consumers. It soon became apparent, however, that the majority of members of the Joint Select Committee were so obsessed with the slogan of concentration of economic power used for anti-national political purposes that they could not distinguish between monopoly and competition, between monopoly and size, or between monopoly and unsocial political power.

2. The very basic concept of the Bill that monopolies exist or are growing in this country so as to pose a danger to our economy and political fabric is, to say the least, disputed and doubtful. On the one hand, all our people say that we are an under-developed, or at the most a developing country, whereas the Bill presumes that we are a developed country with monopolies already raising their ugly head so as to interfere with our democratic way of life. Experience shows that only at a late stage of development did such countries as United States and the United Kingdom think of legislation to control and curb monopolies. But it is forgotten in this country that we have not yet reached that stage and that what we are now attempting to do will affect industrial development rather than control the evil effects of monopolies. As a member of the Swatantra Party, I yield to none in my opposition to monopolies but I am not convinced if in the present state of our industrial development there are any such monopolies or restrictive trade practices as to require the drastic and draconian measures contemplated in this Bill. I fear that the inevitable effect of this legislation will be to retard the progress of industrial development, to restrict avenues of employment, to impose greater hardships on consumers and to affect the revenues of Government which is already facing deficit budgets.

3. If there is a monopoly of any magnitude in the country, it is in the public sector. The State Trading Corporation which is a fully owned Government concern is grabbing all private trade and stifling private enterprise and playing the role of a monopoly colossus with undesirable political and economic consequences. The Iron and Steel Industry, the Heavy Electrical Industry, the Machine-Tool Industry, the Mining Machinery Industry, the Telephone Industry, the Teleprinter Industry, the Cable Industry are all examples of growth of monopoly in the public sector. But these monopolies will not come under the control of the Bill which is before the House. All our efforts to extend the principle of regulation of monopolies and restrictive trade practices to Government concerns, whether industrial or commercial, fell on deaf ears and were not accepted by the majority in the Joint Select Committee. By excluding such large monopolies from the scope of this Bill, the measure has lost its importance and has the ground cut from under its feet. It is hoped

that when the Bill goes before the House, better sense will prevail and Government will either move or accept an amendment so as to extend the scope of the Bill to all industrial and commercial undertakings, coming within the definition, whether belonging to the private sector or the public sector. Let there be no discrimination in the eyes of law between Government undertakings and private enterprises. The evils of monopoly, as seen in the manipulation of prices and distribution, can be found equally in both private industries and public undertakings.

4. There is confusion in the Bill between monopoly and size, between merger and expansion, between healthy growth and empire-building. Where is the need to obtain Government's approval to any scheme of expansion? In the other developed countries, even mergers are not only not frowned upon, but on the other hand looked upon with favour, judging from the recent example of the merger of Associated Electricals and General Electric with the initiative and support of the Government in the United Kingdom which is no less a believer in the socialistic pattern of society than the Congress Government in India which is still, in the belief of many, under the control of some of the leading industrial houses in the country. In the United Kingdom expansion is freely allowed unlike the proposal in this Bill. If we are to concentrate more and more on export, which is the need of the hour, we must reduce our costs of production and that can only be done by appropriate economy of scale or economy of size which would be helped rather than hindered by mergers which should, therefore, be encouraged rather than viewed with disfavour. It is no use talking, on the one hand, of 'export or perish' and on the other doing everything possible to put obstacles in the way of larger size of larger undertakings which alone can provide economic prices so necessary for international competition. Everything proposed in this Bill will raise prices rather than reduce them and will come in the way of exports rather than encourage them.

5. In Clause 20 of the Bill, a dominant undertaking is defined as a single undertaking the value of whose assets or where it consists of more than one undertaking the sum total of the value of the assets of all the inter-connected undertakings constituting the dominant undertaking is not less than one crore of rupees. This limit was suggested by the Monopolies Commission in 1965. Since then the rupee has been devalued and its intrinsic value has gone down and the prices have gone up. A dominant undertaking with an asset of one crore rupees in 1965 would be equivalent to an undertaking in 1969 and the future years with assets not less than 2 or 3 crores. The limit should have been raised to at least 3 crores so as to rope in really dominant undertakings and to be in line with the report of the Monopolies Commission. This proposal was made in the Joint Select Committee, but was not approved either by the Government or by majority of the members. The result is that hardly any undertaking of any size or importance will escape from the definition of dominant undertaking and that all such industries will come within the scope of the Bill adding to more controls, more restrictions and more obstructions, the cumulative effect of which would be a serious retardation of industrial activity, industrial initiative and industrial enterprise. It is hoped that this aspect of the case would be borne in mind in its true perspective when the Bill comes before the House for approval.

6. The definition of inter-connected undertaking is so complicated, unpractical and pervasive as to result in absurd situation which was graphically pointed out by Shri Himmatsingka during the proceedings of the Committee. People connected even in the nth degree would be roped in under this definition. No industrialist would be exempt from being affected by an inter-connected undertaking. This thing could never have been intended in the Bill and was certainly not intended in the report of the Monopolies Commission. No such provision exists in the anti-trust laws or anti-monopoly laws of either the United States or the United Kingdom.

7. The Bill includes Banking in the list of industries or undertakings which would be subject to regulatory provisions contained therein forgetting that there is another legislation which deals with banking fully and effectively. There is no such thing as monopoly in banking. If merger or expansion takes place in banking they are in the best interest of the society. Banking has no possibility of manipulation in distribution, supplies or services. Inter-connection of directorships between banks and industrial companies is adequately controlled by the recent law of Social Control of Banks. What useful purpose would be served by including banking in this Bill is not known except that the Ministry of Industrial Development and Company which would administer this Act would also have a finger in the pie of banking which would otherwise be under the sole control of the Ministry of Finance. The inclusion of banking is misconceived and unnecessary and it is hoped that even at this late stage Government will see the wisdom of deleting banking from this Bill and will bring an amendment to that effect when the Bill comes before the House.

8. As in the case of banking, so in the case of Scheme of finance is also unnecessarily dragged in this Bill. Our difficulty in the country is lack of finances and not surfeit of finances. If a man obtains an industrial licence and works out a scheme of finance, he should be helped rather than hindered by any further processes in the implementation of the scheme of finance. If Government or the Monopolies Commission reject a scheme of finance evolved by an entrepreneur, would it also undertake the responsibility of providing alternative finance, as otherwise interference will be only negative and there will be consequently a slowing down of growth or development. The provision relating to scheme of finance in clause 2, paragraph (q) should be deleted.

9. There are any number of legislations in force calculated to control monopolies, to curb restrictive trade practices and to prevent concentration of economic power so as to be used for undesirable, political purposes. Industrial licensing, import control, Capital issue control, Control of inter-company investments, Control of prices of commodities under the Essential Commodities Act and so on are some of the many measures which could be used effectively to control monopolies without having to put a massive, a complicated and a wholly unnecessary measure like this on the Statute Book. It only follows that it is not the power to control monopolies that is lacking, but the will to control monopolies that is responsible for the present state of affairs as described in detail in the report of the Monopolies Commission. Putting one more draconian measure on the Statute Book is not going to help so long as Government does not free itself from the grip of industrial houses to which they look for donations, contributions and funds for elections and other obnoxious political purposes. We see that operating every day and we have seen it recently

in connection with the raising of funds by the Congress Party for the recent mid-term elections in West Bengal, Bihar, Uttar Pradesh and Punjab. So long as this corruption in high places continues, legislation of the kind that is now proposed will only help to accentuate corruption without combating the evil effects of the monopolies and restrictive trade practices. If the object of the Government is to dangle one more sword over the heads of industrialists in order to extract money from them, this Bill is ideal and will serve the purpose and can be proceeded with. If the intention, however, is to save the society from the evil effects of monopolies, the Government has already adequate powers and there should be no need to add a measure which is so complicated as not to be understood by anyone and which, in all probability, be struck down by the Supreme Court as *ultra vires* and unconstitutional.

10. As my objection is to the main provisions of the Bill, I am not burdening this minute of dissent with minor clauses many of which are open to objection and many of which should be improved so as to rid the Bill of its objectionable features.

C. C. DESAI

NEW DELHI;
February 24, 1969.

XII

हमने प्रायः इस विधेयक की प्रत्येक धारा का गौर के साथ अध्ययन किया है। और माननीय सदस्यों के विभिन्न प्रकार के तर्कों पर भी ध्यान देकर उनके परिणामों को जानने का यत्न किया है।

एकाधिकार जांच आयोग ने जैसा कि लिखा है हमारी औद्योगिक प्रगति के लिये कुछ बुद्धिमान व्यक्ति ही अग्रणी हैं जिनने इस क्षेत्र में उच्च कोटि की उन्नति करके बतलाई है। हम इस धारणा से पूर्ण सहमत हैं और हमारा विश्वास है कि औद्योगिक क्षेत्र को पर्याप्त पनपने का यथोचित अवसर मिलना चाहिये। ऐसा न हो कि आरंभिक अवस्था से ही भिन्न-भिन्न राजनैतिक धारणाओं के आधार पर कानूनी बन्धनों से इस क्षेत्र को जकड़ दिया जावे। यदि ऐसा हुआ तो औद्योगिक प्रगति सर्वथा रुक जाने का भय है।

उद्योग-प्रवाह में एकाधिकार के हम सर्वथा विरुद्ध हैं। हमारा विश्वास है कि देश की वर्तमान दशा को ध्यान में रखते हुए उपभोक्ताओं को बाजार वस्तुएं होड़ (प्रतिस्पर्धा) के विकास में मिलना चाहिये। व्यापार में प्रतिस्पर्धा से जनता को सदैव लाभ मिलता है। अतः इस होड़ का विकास रोकने में जो उद्योगपति अवरोधकारी बनते हैं उनके विरुद्ध तो सक्रिय कदम उठाया जाना चाहिये परन्तु इस आड़ में ऐसे कानून भी नहीं बनाना चाहिये कि होड़ होना तो दूर रहे अपितु उद्योग विकास ही रुक जावे।

डामीनेंट अंडरटेकिंग और इंटर केनेक्टेड अंडरटेकिंग सम्बन्धी धाराओं से हम सहमत नहीं हो सकते। क्योंकि आजकल दिनोंदिन वस्तुओं के दाम जिस तेजी के साथ बढ़ते जा रहे हैं उसे देखते हुए केवल एक करोड़ रुपये के मूल्य से अधिक धन वाले संस्थानों को डामीनेंट उपक्रम मान लेना उचित नहीं है। उदाहरणार्थ जहाज उद्योगों में केवल एक जहाज की कीमत ही एक करोड़ रुपये से अधिक हो सकती है। अतः केवल धन के आधार पर उस उद्योग को डामीनेंट उपक्रम मान लेना अनुचित होगा। अतः इस धारा 20 में धन की संख्या बढ़ाई जानी चाहिये।

इसी प्रकार इंटर-कनेक्टेड अंडरटेकिंग की व्याख्या भी सही नहीं है। हमारे मा० प्रभुदयाल जी हिम्मतसिंहका ने इस विषय में एक नक्शा भी प्रस्तुत किया है जिससे सम्पूर्ण स्थिति समझ में आ सकती है। हम उनकी इस विषयक असहमति से पूर्ण सहमत हैं। क्योंकि विधेयक में बतलाई गई "इंटर-कनेक्टेड अंडरटेकिंग" के अनुसार तो उद्योगपतियों के दूर-दूर के मित्र तथा रिश्तेदार भी अनजाने ही इस विधेयक के शिकार बन जावेंगे।

इस विधेयक की धारा तीन में वर्णित इस तथ्य से भी हम पूर्ण रूप से सहमत नहीं है कि यह विधेयक शासकीय उद्योगों या उससे संचालित उद्योगों पर लागू नहीं होगा। प्रतिस्पर्धा के लिये यह धारा रोक बनकर उद्योगों के मार्ग में रोड़े अटकायेगी।

इसी प्रकार धारा 26 भी नई जोड़ी गई है। हमारे मत से इस धारा के अनुसार कि :— प्रत्येक उपक्रम जिसको कि अध्याय 3 का भाग ए लागू होता है केन्द्रीय शासन से एक अवधि के भीतर रजिस्टर कराना आवश्यक है। यदि इस अवधि में रजिस्टर न हुआ तो कई दुष्परिणाम उठाने पड़ेंगे यह उचित नहीं है। इस धारा पर देश की परिस्थितियों के हिसाब से विचार करना जरूरी है।

इसी प्रकार धारा 37 में भी पुनर्विचार की आवश्यकता है।

निरंजन वर्मा
भारत सिंह चौहान

नई दिल्ली ;
फरवरी 24, 1969।

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES BILL, 1967

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CHAPTER II

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION

JURISDICTION, POWERS AND PROCEDURE OF THE COMMISSION

CHAPTER III

CONCENTRATION OF ECONOMIC POWER

Part A

CLAUSES

CLAUSES

Bill No. XV of 1967

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES BILL, 1967

(AS REPORTED BY THE JOINT COMMITTEE)

[*Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.*]

A

BILL

to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Monopolies and Restrictive Trade Practices Act, 1969.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "agreement" includes any arrangement or understanding, whether or not it is intended that such agreement, shall be

enforceable (apart from any provision of this Act) by legal proceedings;

(*b*) "Commission" means the Monopolies and Restrictive Trade Practices Commission established under section 5;

(*c*) "Director" means the Director of Investigations appointed under section 8;

(*d*) "dominant undertaking" means an undertaking which either by itself or along with inter-connected undertakings,—

(*i*) produces, supplies, distributes or otherwise controls not less than one-third of the total goods of any description that are produced, supplied or distributed in India or any substantial part thereof, not being goods produced, supplied, distributed or controlled by any undertaking which—

(*a*) did not employ more than fifty workers on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(*b*) did not employ more than one hundred workers on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on; or

(*ii*) provides or otherwise controls not less than one-third of any services that are rendered in India or any substantial part thereof.

Explanation I.—Where not less than one-third of the production, supply, distribution or control of any goods or the provision or control of any service is shared by inter-connected undertakings, each such undertaking shall be deemed, for the purposes of this Act, to be a dominant undertaking.

Explanation II.—Where any goods of any description are the subject of different forms of production, supply, distribution or control, every reference in this Act to such goods shall be construed as reference to any of those forms of production, supply, distribution or control, whether taken separately or together or in such groups as may be prescribed.

Explanation III.—Any undertaking which, either by itself or along with inter-connected undertakings, produces, supplies, distributes or controls one-third of any goods or provides or controls one-third of any services according to any of the following criteria, namely, value, cost, price, quantity or capacity, of the goods or services or the number of workers employed for the production, supply, distribution or control of such goods or for the rendering of such services, shall be deemed to be a dominant undertaking.

Explanation IV.—In determining the question as to whether an undertaking is or is not a dominant undertaking, regard shall be had to—

(*i*) the lowest production made, or services rendered, by the undertaking concerned during any one year (hereafter referred to in this *Explanation* as the relevant year) out of the three calendar years immediately preceding the preceding calendar year in which such question is determined, and

(*ii*) the figures published by the Central Government with regard to the total production made or services rendered in India or any substantial part thereof during the relevant year.

Explanation V.—For the purposes of *Explanation IV*, "production" includes supply, distribution or control of goods;

(*e*) "goods" goods includes produced in India, and, in relation to any goods supplied, distributed or controlled in India, also includes goods imported into India;

(*f*) "India" means, for the purposes of this Act, the territories to which this Act extends;

(*g*) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manner, namely:—

(*i*) if one owns or controls the other,

(*ii*) where the undertakings are owned by firms, if such firms have one or more common partners,

(*iii*) where the undertakings are owned by bodies corporate.—

(*a*) if one manages the other, or

(*b*) if one is a subsidiary of the other, or

(c) if they are under the same management within the meaning of section 370 of the Companies Act, 1956, 1 of 1956.

(*d*) if one exercises control over the other in any other manner,

(*iv*) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm,—

(*a*) hold, directly or indirectly, not less than fifty per cent. of the shares, whether preference or equity, of the body corporate, or

(*b*) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate,

(*v*) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management within the meaning of the said section 370,

(*vi*) if the undertakings are owned or controlled by the same person or group of persons,

(*vii*) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub-clauses.

Illustration

Undertaking B is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B. Undertaking C is inter-connected with undertaking A; if undertaking D is inter-connected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.

Explanation.—For the purpose of this clause, two or more undertakings shall be deemed to be inter-connected,—

(*a*) if one or more undertakings which are inter-connected undertakings (as defined in this clause) jointly or severally, own, manage or control the other,

(*b*) if one or more individuals together with their relatives, or firms in which such individuals or their relatives are partners, jointly or severally, own, manage or control the other,

(*c*) if inter-connected undertakings referred to in sub-clause (*a*) and persons, relatives or firms referred to in sub-clause (*b*), jointly or severally, own, manage or control the other;

(*h*) "member" means a member of the Commission;

(*i*) "monopolistic trade practice" means a trade practice which has, or is likely to have, the effect of,—

(*i*) maintaining prices at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of * goods of any description or the supply of any services or in any other manner,

(*ii*) unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services, * * * * * *

(*iii*) limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed, or any service rendered, in India to deteriorate;

(*j*) "monopolistic undertaking" means—

(*i*) *a dominant undertaking which, or*

(*ii*) an undertaking which, together with not more than two other independent undertakings,—

(*a*) produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description that are produced, supplied or distributed in India or any substantial part thereof, not being goods produced, supplied or distributed by any undertaken which—

(*i*) did not employ more than fifty workers on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(*ii*) did not employ more than one hundred workers on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on; or

(*b*) provides or otherwise controls not less than one-half of the services that are rendered in India or any substantial part thereof:

Explanation I.—Any undertaking which, either by itself or along with not more than two other independent undertakings, produces, supplies, distributes or controls one-half of any goods or provides or controls one-half of any services according to any one of the following criteria, namely, value, cost, price, quantity or capacity, of the goods or services or the number of workers employed for the production, supply, distribution or control of such goods or for the rendering of such services, shall be deemed to be a monopolistic undertaking.

Explanation II.—In determining the question as to whether an undertaking is or is not a monopolistic undertaking, regard shall be had to—

(*i*) the lowest production made, or services rendered by the undertaking concerned during any one year (hereafter referred to in this Explanation as the "relevant year") out of the three calendar years immediately preceding the preceding calendar year in which such question is determined, and

(*ii*) the figures published by the Central Government with regard to the total production made or services rendered in India or any substantial part thereof during the relevant year.

Explanation III.—For the purposes of *Explanation II*, production includes supply, distribution or control of goods;

(*k*) "prescribed" means prescribed by rules made under this Act;

(*l*) "price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;

(*m*) "register" means the register kept by the Registrar under section 36;

(*n*) "Registrar" means the Registrar of Restrictive Trade Agreements appointed under section 34, and includes every Additional, Joint, Deputy or Assistant Registrar appointed under that section;

(*o*) "restrictive trade practice" means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular,—

(*i*) which tends to obstruct the flow of capital or resources into the stream of production, or

(*ii*) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions;

(*p*) "retailer", in relation to the sale of any goods, includes every person, other than a wholesaler, who sells the goods to any other person; and in respect of the sale of goods by a wholesaler, to any person for any purpose other than re-sale, includes that wholesaler;

(*q*) "scheme of finance" means a scheme indicating the sources from which, and the terms and conditions on which, finances are proposed to be obtained by an undertaking;

(*r*) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, insurance, transport, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

(*s*) "trade means any trade, business, industry, profession, occupation relating to the production, supply, distribution or control of goods and includes the provision of any services;

(*t*) "trade association" means a body of persons (whether incorporated or not) which is formed for the purpose of further-

ing the trade interests of its members or of persons represented by its members;

(*u*) "trade practice" means any practice relating to the carrying on of any trade, and includes—

(*i*) anything done by any person which controls or affects the price charged by, or the method of trading of, any trader or any class of traders,

(*ii*) a single or isolated action of any person in relation to any trade;

(*v*) "undertaking" means an undertaking * * * which is engaged in the production, supply, distribution or control of goods of any description or the provision of service of any kind;

(*w*) "value of assets", in relation to an undertaking, means the value of its assets as shown in its books of account after making provision for depreciation or for renewals, or diminution in value;

(*x*) "wholesaler", in relation to the sale of any goods, means a person who sells the goods to any person for the purpose of resale;

(*y*) words and expressions used but not defined in this Act and defined in the Companies Act, 1956, have the meanings respectively assigned to them in that Act. 1 of 1956.

Act not to apply in certain cases.

3. Unless the Central Government, by notification in the Official Gazette, otherwise directs, this Act shall not apply to—

(*a*) any undertaking owned or controlled by a Government company,

(*b*) any undertaking owned or controlled by the Government,

(*c*) any undertaking owned or controlled by a corporation (not being a company) established by or under any Central, Provincial or State Act,

(*d*) any trade union or other association of workmen or employees formed for their own reasonable protection as such workmen or employees,

(*e*) any undertaking engaged in an industry, the management of which has been taken over by any person or body of persons in pursuance of any authorisation made by the Central Government under any law for the time being in force.

Application of other laws not barred.

4. Save as expressly provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

CHAPTER II

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION

Establishment and constitution of the Commission.

5. (*1*) For the purposes of this Act, the Central Government shall establish, by notification in the Official Gazette, a commission to be known as the Monopolies and Restrictive Trade Practices Commission which shall consist of a Chairman and not less than two and not more than eight other members, to be appointed by the Central Government.

(*2*) The Chairman of the Commission shall be a person who is, or has been or, is qualified to be, a Judge of the Supreme Court or of a High Court and the members thereof shall be persons of ability, integrity and standing who have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

(*3*) Before appointing any person as a member of the Commission, the Central Government shall satisfy itself that the person does not, and will not, have, any such financial or other interest as is likely to affect prejudicially functions as such member.

Terms of office, conditions of service, etc., of members.

6. (*1*) Every member shall hold office for such period, not exceeding five years, as may be specified by the Central Government in the notification made under sub-section (*1*) of section 5, but shall be eligible for re-appointment:

Provided that no member shall hold office as such for a total period exceeding ten years, or after he has attained the age of sixty-five years, whichever is earlier.

(*2*) Notwithstanding anything contained in sub-section (*1*), a member may—

(*a*) by writing under his hand and addressed to the Central Government resign his office at any time;

(*b*) be removed from his office in accordance with the provisions of section 7.

(*3*) A casual vacancy caused by the resignation or removal of the Chairman or any other member of the Commission under sub-section (*2*) or otherwise shall be filled by fresh appointment.

(*4*) No act or proceeding of the Commission shall be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

(*5*) The Chairman and other members of the Commission shall receive such remuneration and other allowances and shall be governed by such conditions of service as may be prescribed:

Provided that the remuneration of the Chairman or any other member shall not be varied to his disadvantage after his appointment.

(6) In the case of a difference of opinion among the members of the Commission, the opinion of the majority shall prevail and the opinion or orders of the Commission shall be expressed in terms of the views of the majority.

(7) The Chairman of the Commission and every member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, in such manner and before such authority as may be prescribed.

(8) Any member ceasing to hold office as such shall not hold any appointment in, or be connected with the management or administration of, any industry or undertaking to which this Act applies for a period of five years from the date on which he ceases to hold such office.

Removal of members from office in certain circumstances.

7. (1) The Central Government may remove from office any member, who—

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude, or

(c) has become physically or mentally incapable of acting as such member, or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1) no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought, on such grounds, to be removed.

Appointment of Director and staff of the Commission.

8. The Central Government may, in consultation with the Commission, appoint a Director of Investigation for making investigations for the purposes of this Act and may, in addition, make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of the Director or any member of the staff of the Commission shall not be varied to his disadvantage after his appointment.

Salaries, etc., to be defrayed out of the Consolidated Fund of India.

9. The salaries and allowances payable to the members and the administrative expenses, including salaries, allowances and pensions, payable to or in respect of officers and other employees of the Commission, shall be defrayed out of the Consolidated Fund of India.

JURISDICTION, POWERS AND PROCEDURE OF THE COMMISSION

Inquiry into monopolistic or restrictive trade practices by Commission.

10. The Commission may inquire into—

(*a*) any restrictive trade practice—

(*i*) upon receiving a complaint of facts which constitute such practice from any trade or consumers' association having a membership of not less than twenty-five persons or from twenty-five or more consumers, or

(*ii*) upon a reference made to it by the Central Government or a State Government, or

(*iii*) upon application made to it by the Registrar, or * *

(*iv*) upon its own knowledge or information;

(*b*) any monopolistic trade practice, upon a reference made to it by the Central Government or upon its own knowledge or information.

Investigation by Director before issue of process in certain cases.

11. In respect of any restrictive trade practice of which complaint is made under sub-clause (*i*) of clause (*a*) of section 10, the Commission shall, before issuing any process requiring the attendance of the person complained against, cause a preliminary investigation to be made by the Director, in such manner as it may direct, for the purpose of satisfying itself that the complaint requires to be inquired into.

Powers of the Commission.

12. (*1*) The Commission shall, for the purposes of any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(*a*) the summoning and enforcing the attendance of any witness and examining him on oath;

(*b*) the discovery and production of any document or other material object producible as evidence;

(*c*) the reception of evidence on affidavits;

(*d*) the requisitioning of any public record from any court or office;

(*e*) the issuing of any commission for the examination of witnesses.

(*2*) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898. 45 of 1860. 5 of 1898.

(*3*) The Commission shall have power to require any person—

(*a*) to produce before, and allow to be examined and kept by, an officer of the Commission specified in this behalf, such books, accounts or other documents in the custody or under the

control of the person so required as may be specified or described in the requisition, being documents relating to any trade practice, the examination of which may be required for the purposes of this Act; and

(b) to furnish to an officer so specified such information as respects the trade practice as may be required for the purposes of this Act or such other information as may be in his possession in relation to the trade carried on by any other person.

(4) For the purpose of enforcing the attendance of witnesses the local limits of the Commission's jurisdiction shall be the limits of the territory of India.

Orders of Commission may be subject to conditions, etc.

13. (1) In making any order under this Act, the Commission may make such provisions not inconsistent with this Act, as it may think necessary or desirable for the proper execution of the order and any person who commits a breach of or fails to comply with any obligation imposed on him by any such provision shall be deemed to be guilty of an offence under this Act.

(2) Any order made by the Commission may be amended or revoked at any time in the manner in which it was made.

(3) An order made by the Commission may be general in its application or may be limited to any particular class of traders or a particular class of trade practices or to a particular trade practice or to a particular locality.

Orders where party concerned does not carry on business in India.

14. Where any practice substantially falls within monopolistic or restrictive trade practice, or both, relating to the production, supply, distribution or control of goods of any description or the provision of any services and any party to such practice does not carry on business in India, an order may be made under this Act with respect to that part of the practice which is carried on in India.

Restriction of application of orders in certain cases.

15. No order made under this Act with respect to any monopolistic or restrictive trade practice shall operate so as to restrict—

(a) the right of any person to restrain any infringement of a patent granted in India, or

(b) any person as to the condition which he attaches to a licence to do anything, the doing of which but for the licence would be an infringement of a patent granted in India, or

(c) the right of any person to export goods from India, to the extent to which the monopolistic or restrictive trade practice relates exclusively to the production, supply, distribution or control of goods for such export.

Sittings of the Commission.

16. (1) The central office of the Commission shall be in Delhi but the Commission may sit at such places in India and at such times as may be most convenient for the exercise of its powers or functions under this Act.

(2) The powers or functions of the Commission may be exercised or discharged by Benches formed by the Chairman of the Commission from among the members.

Hearing to be in public except in special circumstances.

17. (1) Subject to the provisions of sub-section (2), the hearing of proceedings before the Commission shall be in public.

(2) Where the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any offence or matter or for any other reason, the Commission may—

(a) hear the proceeding or any part thereof in private;

(b) give directions as to the persons who may be present thereat;

(c) prohibit or restrict the publication of evidence given before the Commission (whether in public or in private) or of matters contained in documents filed before the Commission.

Procedure of the Commission.

18. (1) Subject to the provisions of this Act, the Commission shall have power to regulate—

(a) the procedure and conduct of its business;

(b) * * * the procedure of Benches of the Commission;

(c) the delegation to one or more members of such powers or functions as the Commission may specify.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the powers of the Commission shall include the power to determine the extent to which persons interested or claiming to be interested in the subject-matter of any proceeding before it are allowed to be present or to be heard, either by themselves or by their representatives or to cross-examine witnesses or otherwise to take part in the proceeding.

* * * *

Orders of the Commission to be noted in the register.

19. The Commission shall cause an authenticated copy of every order made by it in respect of a restrictive trade practice to be forwarded to the Registrar who shall have it recorded in such manner as may be prescribed.

CHAPTER III

CONCENTRATION OF ECONOMIC POWER

Part A

Undertakings to which this Part applies.

20. This Part shall apply to—

(a) an undertaking if the total value of—

(i) its own assets, or

(ii) its own assets together with the assets of its interconnected undertakings,

* * * *

is not less than twenty crores of rupees;

(*b*) a dominant undertaking—

(*i*) where it is a single undertaking, the value of its assets, or

(*ii*) where it consists of more than one undertaking, the sum-total of the value of the assets of all the inter-connected undertakings constituting the dominant undertaking,

is not less than one crore of rupees.

Explanation.—The value referred to in this section shall be,—

(*i*) in the case of an undertaking referred to in clause (*a*) or clause (*b*), as the case may be, the value of its assets on the last day of its financial year which closes during the calendar year immediately preceding the calendar year in which the question arises as to whether this Part does or does not apply to such undertaking; and

(*ii*) in the case of an inter-connected undertaking, the value of its assets on the last day of its financial year which closes during the calendar year immediately preceding the calendar year in which the question arises as to whether this Part does or does not apply to the undertaking referred to in clause (*a*) or clause (*b*).

Expansion of undertakings.

21. (*1*) Subject to the provisions of section 23, where an undertaking to which this Part applies proposes to substantially expand its activities by the issue of fresh capital or by the installation of new machinery or other equipment or in any other manner, it shall, before taking any action to give effect to the proposal for such expansion, give to the Central Government notice, in the prescribed form, of its intention to make such expansion, stating therein the scheme of finance with regard to the proposed expansion, whether it is connected with any other undertaking or undertakings and if so, giving particulars relating to all the inter-connected undertakings * * * and such other information as may be prescribed.

(*2*) Notwithstanding anything contained in any other law for the time being in force, no undertaking shall give effect to any proposal for its substantial expansion unless such proposal has been approved by the Central Government.

Explanation.—For the purpose of this section, an undertaking shall be deemed to expand substantially if, after such expansion,—

(*a*) in the case of an undertaking to which clause (*a*) of section 20 applies,—

(*i*) the value of its assets, * * * before the expansion, would result in an increase by not less than twenty-five per cent, of such value, or

(*ii*) the production, supply or distribution of any goods or the provision of any services by it before the expansion,

would result in an increase by not less than twenty-five per cent. of the goods produced, supplied, distributed or controlled, or services provided, by it;

(b) in the case of an undertaking to which clause (b) of section 20 applies, the production, supply, distribution or control of any goods or the provision * * of any services by it would result in an increase by not less than twenty-five per cent. of the goods produced, supplied, distributed or controlled, or services provided, by it before the expansion.

(3) (a) The Central Government may call upon the undertaking concerned to satisfy it that the proposed expansion or the scheme of finance with regard to such expansion is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial to the public interest in any other manner and thereupon the Central Government may, if it is satisfied that it is expedient in the public interest so to do, by order accord approval to the proposal for such expansion.

(b) If the Central Government is of opinion that no such order as is referred to in clause (a) can be made without a further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(c) Upon receipt of the report of the Commission, the Central Government may pass such orders with regard to the proposal for the expansion of the undertaking as it may think fit.

(d) No scheme of any expansion approved by the Central Government and no scheme of finance with regard to such expansion shall be modified except with the previous approval of the Central Government.

(4) Nothing in this section shall apply to any industrial undertaking (which is not a dominant undertaking) to which section 13 of the Industries (Development and Regulation) Act, 1951, applies, in so far as the expansion relates to production of the same or similar type of goods. 65 of 1951.

Establishment of new undertakings.

22. (1) No person or authority, other than * * Government, shall, after the commencement of this Act, establish any new undertaking which, when established, would become an inter-connected undertaking of an undertaking to which clause (a) of section 20 applies, except under, and in accordance with, the previous permission of the Central Government.

* * * *

(2) Any person or authority intending to establish a new undertaking referred to in sub-section (1) shall, before taking any action for the establishment of such undertaking, make an application to the Central Government in the prescribed form for that Government's approval to the proposal of establishing any undertaking and shall set out in such application information with regard to the

inter-connection, if any, of the new undertaking (which is intended to be established) with every other undertaking, the scheme of finance for the establishment of the new undertaking and such other information as may be prescribed.

(3) (*a*) The Central Government may call upon the person or authority to satisfy it that the proposal to establish a new undertaking or the scheme of finance with regard to such proposal is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial to the public interest in any other manner and thereupon the Central Government may, if it is satisfied that it is expedient in the public interest so to do, by order accord approval to the proposal.

(*b*) If the Central Government is of opinion that no such approval as is referred to in clause (*a*) can be made without further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(*c*) Upon receipt of the report of the Commission, the Central Government may pass such orders with regard to the proposal for the establishment of a new undertaking as it may think fit.

(*d*) No scheme of finance on the strength of which the establishment of a new undertaking has been approved by the Central Government shall be modified except with the previous approval of that Government.

Merger, amalgamation and take over.

23. (1) Notwithstanding anything contained in any other law for the time being in force,—

(*a*) no scheme of merger or amalgamation of an undertaking to which this Part applies with any other undertaking,

(*b*) no scheme of merger or amalgamation of two or more undertakings which would have the effect of bringing into existence an undertaking to which clause (*a*) or clause (*b*) of section 20 would apply,

shall be sanctioned by any Court or be recognised for any purpose or be given effect to unless the scheme for such merger or amalgamation has been approved by the Central Government under this Act.

(2) If any undertaking to which this Part applies frames a scheme of merger or amalgamation with any other undertaking, or * a scheme of merger or amalgamation is proposed between two or more undertakings, and, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (*a*) or clause (*b*) of section 20 would apply, it shall, before taking any action to give effect to the proposed scheme, make an application to the Central Government in the prescribed form with a copy of the scheme annexed thereto, for the approval of the scheme.

(3) Nothing in sub-section (1) or sub-section (2) shall apply to the scheme of merger or amalgamation of such inter-connected

undertakings as are not dominant undertakings and as produce the same goods.

(4) If an undertaking to which this Part applies proposes to acquire by purchase, take over or otherwise the whole or part of an undertaking which will or may result either—

(a) in the creation of an undertaking to which this Part would apply; or

(b) in the undertaking becoming an inter-connected undertaking of an undertaking to which this Part applies,

it shall, before giving any effect to its proposals, make an application in writing to the Central Government in the prescribed form of its intention to make such acquisition, stating therein information regarding its inter-connection with other undertakings, the scheme of finance with regard to the proposed acquisition and such other information as may be prescribed.

(5) No proposal referred to in sub-section (4) which has been approved by the Central Government and no scheme of finance with regard to such proposal shall be modified except with the previous approval of the Central Government.

(6) On receipt of an application under sub-section (2) or sub-section (4), the Central Government may, if it thinks fit, refer the matter to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(7) On receipt of the Commission's report the Central Government may pass such orders as it may think fit.

(8) Notwithstanding anything contained in any other law for the time being in force, no proposal to acquire by purchase, take over or otherwise of an undertaking to which this Part applies shall be given effect to unless the Central Government has made an order according its approval to the proposal.

(9) Nothing in sub-section (4) shall apply to the acquisition by an undertaking, which is not a dominant undertaking, of another undertaking which is not also a dominant undertaking, if both such undertakings produce the same goods:

Provided that nothing in this sub-section shall apply if as a result of such acquisition an undertaking comes into existence to which clause (a) or clause (b) of section 20 would apply.

Merger, amalgamation or take over in contravention of section 23.

24. Where any merger, amalgamation or take over is being, or has been, effected in contravention of the provisions of section 23, the Central Government may, after such consultation with the Commission as it may consider necessary, direct, without prejudice to any penalty which may be imposed under this Act for such contravention, the undertaking concerned to cease and desist from such contravention, to divest itself of the stock or other share capital or

assets so acquired and to carry out such further directions as the Central Government may, in all the circumstances of the case, issue.

Directors of undertakings not to be appointed directors of other undertakings.

25. (*1*) Notwithstanding anything to the contrary contained in any other law for the time being in force, no person, who is a director of an undertaking to which this Part applies, shall be appointed, after the commencement of this Act, as a director of any other undertaking * * * except with the prior approval of the Central Government and any appointment contrary to the provisions of this section shall be void:

Provided that the approval of the Central Government shall not be necessary to the appointment of a person as a director of an undertaking unless he holds such office in more than ten interconnected undertakings.

(*2*) Notwithstanding anything contained in sub-section (*1*), no act done by a person as a director shall be invalid merely on the ground that his appointment was void by reason of this section or of any provision of this Part:

Provided that nothing in this section shall be deemed to give validity to any act done by a director after his appointment has been shown to the undertaking and the director concerned to be void.

(*3*) Notwithstanding anything to the contrary contained in any other law for the time being in force, every director holding such directorship as is not consistent with the provisions of this section shall, unless his appointment expires earlier, obtain within a period of one year from the commencement of this Act, the approval of the Central Government to such appointment and if he fails to do so, his appointment shall, on the expiry of the said period, become void.

(*4*) The provisions of sub-sections (*1*), (*2*) and (*3*) shall, as far as may be, apply to partners of any firm which is an undertaking within the meaning of this Act, as they apply to directors of companies.

Registration of undertakings to which Part A applies.

26. (*1*) Every undertaking to which this Part applies at the commencement of this Act or to which the provisions of that Part become applicable thereafter, shall, within sixty days from such commencement or the date on which that Part becomes first applicable to it, or within such further time as the Central Government may, on sufficient cause being shown, allow, make an application (in such form and containing such particulars as may be prescribed) to the Central Government for its registration as such undertaking.

(*2*) The Central Government shall, on receipt of the application referred to in sub-section (*1*), forthwith enter the name of the undertaking in a register to be maintained for the purpose and issue to the undertaking concerned a certificate of registration containing such particulars as may be prescribed.

(3) Any undertaking which has ceased to be an undertaking to which this Part applies may, at any time after such cesser, apply to the Central Government for cancellation of the registration and the Central Government may, after making such inquiry as it may think fit, cancel the registration of such undertaking and notify such cancellation in the Official Gazette.

Part B

Division of undertakings.

27. (*1*) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Central Government may, if it is of opinion that the working of an undertaking to which Part A of this Chapter applies, is prejudicial to the public interest, or has led, or is leading, or is likely to lead, to the adoption of any monopolistic or restrictive trade practices, refer the matter to the Commission for an inquiry as to whether it is expedient in the public interest to make an order,—

(*a*) for the division of any trade of the undertaking by the sale of any part of the undertaking or assets thereof, or,

(*b*) for the division of any undertaking or inter-connected undertakings into such number of undertakings as the circumstances of the case may justify,

and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon and shall, where it is of opinion that a division ought to be made, specify the manner of the division and compensation, if any, payable for such division.

Explanation.—For the purposes of this section all activities carried on by way of* trade by an undertaking or two or more inter-connected undertakings may be treated as a single trade.

(*2*) If the Commission so recommends, the Central Government may, notwithstanding anything contained in any other law for the time being in force, by an order in writing, direct the division of any trade of the undertaking or of the undertaking or inter-connected undertakings.* * *

(*3*) Notwithstanding anything contained in any other law for the time being in force, the order referred to in sub-section (*2*) may provide for all such matters as may be necessary to give effect to the division of any trade of the undertaking or of the undertaking or inter-connected undertakings, including,—

(*a*) the transfer or vesting of property, rights, liabilities or obligations;

(*b*) the adjustment of contracts either by the discharge or reduction of any liability or obligation or otherwise;

(*c*) the creation, allotment, surrender or cancellation of any shares, stock or securities;

(*d*) the payment of compensation;

(*e*) the formation, or winding up of an undertaking or the amendment of the memorandum and articles of association or any other instruments regulating the business of any undertaking;

(*f*) the extent to which and the circumstances in which provisions of the order affecting an undertaking may be altered by the undertaking and the registration thereof;

(*g*) the continuation, with such change as may be necessary, of parties to any legal proceeding.

(4) Where the Central Government makes, or intends to make, an order for any purpose mentioned in sub-section (3), it may, with a view to achieving that purpose, prohibit or restrict the doing of anything that might impede the operation or making of the order and may impose on any person such obligations as to the carrying on of any activities or the safeguarding of any assets, as it may think fit, or it may, by order, provide for the carrying on of any activities or safeguarding of any assets either by the appointment of a person to conduct, or supervise the conduct of, any such activities or in any other manner.

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an undertaking or inter-connected undertakings shall not be entitled to claim any compensation for such cesser.

Part C

28. In exercising its powers under Part A or Part B of this Chapter, the Central Government, or, as the case may be, the Commission, shall take into account all matters which appear in the particular circumstances to be relevant and, among other things, regard shall be had to the need consistently with the general economic position of the country— **Matters to be considered by the Central Government before according approval.**

(*a*) to achieve the production, supply and distribution, by most efficient and economical means, of goods of such types and qualities, in such volume and at such prices as will best meet the requirements of the defence of India, and home and overseas markets;

(*b*) to have the trade organised in such a way that its efficiency is progressively increased;

(*c*) to ensure the best use and distribution of men, materials and industrial capacity in India;

(*d*) to effect technical and technological improvements in trade and expansion of existing markets and the opening up of new markets;

(*e*) to encourage new enterprises as a countervailing force to the concentration of economic power to the common detriment;

(*f*) to regulate the control of the material resources of the community to subserve the common good; and

(*g*) to reduce disparities in development between different regions and more especially in relation to areas which have remained markedly backward.

Opportunity of being heard

29. Before making an order under this Chapter, the Central Government shall give a reasonable opportunity of being heard to any person who is, or may be, in its opinion, interested in the matter under the consideration of that Government.

Time within which action should be taken.

30. (*1*) Where the Central Government is of opinion that no approval can be accorded under section 21 or section 22, or no order under section 23 can be made, unless a further inquiry has been held into the matter by the Commission, it shall refer the matter to the Commission within sixty days from the date of receipt of the notice under section 21, application under section 22 or the proposal under section 23, as the case may be:

Provided that where further particulars in connection with any such notice, application or proposal are called for by the Central Government, the said period of sixty days shall be computed from the date on which such further particulars are furnished to that Government.

(*2*) Where any notice, application or proposal under this Chapter is referred to the Commission for an inquiry, it shall be the duty of the Commission to make its report on the matter referred to it within ninety days from the date on which the reference is received by it, except where the Commission, for special reasons recorded by it in writing, is of opinion that the report cannot be made by it within the said period of ninety days.

(*3*) Every notice, application or proposal in respect of which a report has been submitted by the Commission to the Central Government shall be disposed of by that Government within sixty days from the date of receipt of the report of the Commission.

(*4*) Every notice, application or proposal which has not been referred to the Commission, shall be disposed of by the Central Government within ninety days from the date on which such notice, application or proposal, as the case may be, is received by it, except where the Central Government, for special reasons recorded by it in writing, is of opinion that the notice, application or proposal, as the case may be, cannot be disposed of within the said period of ninety days.

CHAPTER IV

MONOPOLISTIC TRADE PRACTICES

Investigation by Commission of monopolistic trade practices.

31. (*1*) Where it appears to the Central Government that one or more monopolistic undertakings are indulging in any monopolistic trade practice, or that, monopolistic trade practices prevail in respect of any goods or services, that Government may refer the matter to the Commission for an inquiry and the Commission shall, after such hearing as it thinks fit, report to the Central Government its findings thereon.

(*2*) If as a result of such inquiry, the Commission makes a finding to the effect that, having regard to the economic conditions prevailing in the country and to all other matters which appear in particular circumstances to be relevant, the trade practice operates

or is likely to operate against the public interest, the Central Government may, notwithstanding anything contained in any other law for the time being in force, pass such orders as it may think fit to remedy or prevent any mischiefs which result or may result from such trade practice.

(3) Any order made by the Central Government under this section may include an order—

(*a*) regulating the production, supply, distribution or control of any goods by the undertaking or the control or supply of any service by it and fixing the terms of sale (including prices) or supply thereof;

(*b*) prohibiting the undertaking from resorting to any act or practice or from pursuing any commercial policy which prevents or lessens, or is likely to prevent or lessen, competition in the production, supply or distribution of any goods or provision of any services;

(c) fixing standards for the goods used or produced by the undertaking;

(*d*) declaring unlawful, except to such extent and in such circumstances as may be provided by or under the order, the making or carrying out of any such agreement as may be specified or described in the order;

(*e*) requiring any part to any such agreement as may be so specified or described to determine the agreement within such time as may be so specified, either wholly or to such extent as may be so specified.

Monopolistic trade practice when to be deemed to be prejudicial to public interest.

32. For the purposes of this Chapter, a monopolistic trade practice shall be deemed to be prejudicial to public interest if, having regard to the economic conditions prevailing in the country and to all other matters which are relevant in the particular circumstances, the effect of the trade practice is or would be—

(*a*) to increase unreasonably the cost relating to the production, supply or distribution of goods or the performance of any service;

(*b*) to increase unreasonably—

(*i*) the prices at which goods are sold, or

(*ii*) the profits derived from the production, supply or distribution of goods or from the performance of any service;

(*c*) to reduce or limit unreasonably competition in the production, supply or distribution of any goods (including their sale or purchase) or the provision of any service;

(*d*) to limit or prevent unreasonably the supply of goods to consumers, or the provision of any service;

(*e*) to result in a deterioration in the quality of any goods or in the performance of any service.

CHAPTER V

REGISTRATION OF AGREEMENTS RELATING TO RESTRICTIVE TRADE PRACTICES

Registrable agreements relating to restrictive trade practices.

33. (1) Any agreement relating to a restrictive trade practice falling within one or more of the following categories shall be subject to registration in accordance with the provisions of this Chapter, namely:—

(*a*) any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(*b*) any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(*c*) any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

(*d*) any agreement to purchase or sell goods or to tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers;

(*e*) any agreement to grant or allow concessions or benefits, including allowances, discount, rebates or credit in connection with, or by reason of, dealings;

(*f*) any agreement to sell goods on condition that the prices to be charged on re-sale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;

(*g*) any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal of the goods;

(*h*) any agreement not to employ or restrict the employment of any method, machinery or process in the manufacture of goods;

(*i*) any agreement for the *exclusion from any trade association of any person carrying on or intending to carry on, in good faith the trade in relation to which the trade association is formed;

(*j*) any agreement to sell goods at such prices as would have the effect of ** eliminating competition or a competitor;

(*k*) any agreement not hereinbefore referred to in this section which the Central Government may, by notification in the Official Gazette, specify for the time being as being one relating to a restrictive trade practice within the meaning of this sub-section pursuant to any recommendation made by the Commission in this behalf;

(*l*) any agreement to enforce the carrying out of any such agreement as is referred to in this sub-section.

(2) The provisions of this section shall apply, so far as may be, in relation to agreements making provision for services as they apply in relation to agreements connected with the production, supply, distribution or control of goods.

(3) No agreement falling within this section shall be subject to registration in accordance with the provisions of this Chapter if it is expressly authorised by or under any law for the time being in force or has the approval of the Central Government or if the Government is a party to such agreement.

Registrar of restrictive trade agreements.

34. (1) For maintaining a register of agreements subject to registration under this Act and for performing the other functions imposed on him by this Act, there shall be appointed by the Central Government an officer to be known as the Registrar of Restrictive Trade Agreements.

(2) The Central Government may appoint as many persons as it thinks fit to be Additional, Joint, Deputy or Assistant Registrars for the purpose of assisting the Registrar in the performance of his functions under this Act.

Registration of agreements.

35. (1) The Central Government shall, by notification in the Official Gazette, specify a day (hereinafter referred to as the appointed day) on and from which every agreement falling within section 33 shall become registrable under this Act:

Provided that different days may be appointed for different categories of agreements.

(2) Within sixty days from the appointed day, in the case of an agreement existing on that day, and in the case of an agreement made after the appointed day, within sixty days from the making thereof, there shall be furnished to the Registrar in respect of every agreement falling within section 33, the following particulars, namely:—

(a) the names of the persons who are parties to the agreement; and

(b) the whole of the terms of the agreement.

(3) If at any time after the agreement has been registered under this section, the agreement is varied (whether in respect of the parties or in respect of the terms thereof) or determined otherwise than by efflux of time, particulars of the variation or determination shall be furnished to the Registrar within one month after the date of the variation or determination.

(4) The particulars to be furnished under this section in respect of an agreement shall be furnished—

(a) in so far as the agreement or any variation or determination of the agreement is made by an instrument in writing, by the production of the original or a true copy of that agreement; and

(b) in so far as the agreement or any variation or determination of the agreement is not so made, by the production of

a memorandum in writing signed by the person by whom the particulars are furnished.

(5) The particulars to be furnished under this section shall be furnished by or on behalf of any person who is a party to the agreement or, as the case may be, was a party thereto immediately before its determination, and where the particulars are duly furnished by or on behalf of any such person, the provisions of this section shall be deemed to be complied with on the part of all such persons.

Explanation I.—Where any agreement subject to registration under this section relates to the production, supply, distribution or control of goods or the performance of any services in India and any party to the agreement carries on business in India, the agreement shall be deemed to be an agreement within the meaning of this section, notwithstanding that any other party to the agreement does not carry on business in India.

Explanation II.—Where an agreement is made by a trade association, the agreement for the purposes of this section shall be deemed to be made by all persons who are members of the association or represented thereon as if each such person were a party to the agreement.

Explanation III.—Where specific recommendations, whether express or implied, are made by or on behalf of a trade association to its members, or to any class of its members, as to the action to be taken or not to be taken by them in relation to any matter affecting the trade conditions of those members, this section shall apply in relation to the agreement for the constitution of the association notwithstanding any provision to the contrary therein as if it contained a term by which each such member and any person represented on the association by any such member agreed with the association to comply with those recommendations and any subsequent recommendations affecting those recommendations.

Keeping the register.

36. (*1*) For the purposes of this Act, the Registrar shall keep a register in the prescribed form and shall enter therein the prescribed particulars as regards agreements subject to registration.

(*2*) The Registrar shall provide for the maintenance of a special section of the register for the entry or filing in that section of such particulars as the Commission may direct, being—

(*a*) particulars containing information, the publication of which would, in the opinion of the Commission, be contrary to the public interest;

(*b*) particulars containing information as to any matter, being information the publication of which, in the opinion of the Commission, would substantially damage the legitimate business interests of any person.

(3) Any party to an agreement required to be registered under section 35 may apply to the Registrar—

(*i*) for the agreement or any part of the agreement to be excluded from the provisions of this Chapter relating to the registration on the ground that the agreement or part thereof has no substantial economic significance, or

(*ii*) for inclusion of any provision of the agreement in the special section,

and the Registrar shall dispose of the matter in conformity with any general or special directions issued by the Commission in this behalf.

CHAPTER VI

CONTROL OF CERTAIN RESTRICTIVE TRADE PRACTICES

Investigation into restrictive trade practices by Commission.

37. (*1*) The Commission may inquire into any restrictive trade practice, whether the agreement, if any, relating thereto has been registered under section 35 or not, which may come before it for inquiry and, if, after such inquiry it is of opinion that the practice is prejudicial to the public interest, the Commission may, by order, direct that—

(*a*) the practice shall be discontinued or shall not be repeated;

(*b*) the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in respect thereof in such manner as may be specified in the order.

(*2*) The Commission may, instead of making any order under this section, permit the party to any restrictive trade practice, if he so appliesfl to take such steps within the time specified in this behalf by the Commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest, and, in any such case, if the Commission is satisfied that the necessary steps have been taken within the time specified, it may decide not to make any order under this section in respect of that trade practice.

(*3*) No order shall be made under sub-section (*1*) in respect of—

(*a*) any agreement between buyers relating to goods which are bought by the buyers for consumption and not for ultimate re-sale whether in the same or different form, type or specie or as constituent of some other goods;

(*b*) a trade practice which is expressly authorised by any law for the time being in force.

(*4*) Notwithstanding anything contained in this Act, if the Commission, during the course of an inquiry under sub-section (*1*), finds that a monopolistic undertaking is indulging in restrictive trade practices, it may, after passing such orders under sub-section (*1*) or sub-section (*2*) with respect to the restrictive trade practices as it may consider necessary, submit the case along with its findings thereon to the Central Government with regard to any monopolistic trade practice for such action as that Government may take under section 31.

Presumption as to the public interest.

38. (1) For the purposes of any proceedings before the Commission under section 37, a restrictive trade practice shall be deemed to be prejudicial to the public interest unless the Commission is satisfied of any one or more of the following circumstances, that is to say—

(a) that the restriction is reasonably necessary, having regard to the character of the goods to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the consumption, installation or use of those goods;

(b) that the removal of the restriction would deny to the public as purchasers, consumers or users of any goods other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction itself or of any arrangements or operations resulting therefrom;

(c) that the restriction is reasonably necessary to counteract measures taken by any one person not party to the agreement with a view to preventing or restricting competition in or in relation to the trade or business in which the persons party thereto are engaged;

(d) that the restriction is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of goods to, or the acquisition of goods from, any one person not party thereto who controls a preponderant part of the trade or business of acquiring or supplying such goods, or for the supply of goods to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such persons, controls a preponderant part of the market for such goods;

(e) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction would be likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which a substantial proportion of the trade, or industry to which the agreement relates is situated;

(f) that having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of India or in relation to the whole business (including export business) of the said trade or industry;

(g) that the restriction is reasonably required for purposes in connection with the maintenance of any other restriction accepted by the parties, whether under the same agreement or under any other agreement between them, being a restriction which is found by the Commission not to be contrary to the public interest upon grounds other than those specified in this paragraph, or has been so found in previous proceedings before the Commission; or

(*h*) that the restriction does not directly or indirectly restrict or discourage competition to any material degree in any relevant trade or industry and is not likely to do so,

and is further satisfied (in any such case) that the restriction is not unreasonable having regard to the balance between those circumstances and any detriment to the public or to persons not parties to the agreement (being purchasers, consumers or users of goods produced or sold by such parties, or persons engaged or seeking to become engaged in the trade or business of selling such goods or of producing or selling similar goods) resulting or likely to result from the operation of the restriction.

(2) In this section "purchasers", "consumers" and "users" include persons purchasing, consuming or using for the purpose or in course of trade or business or for public purposes; and references in this section to any one person include references to any two or more persons being inter-connected undertakings or individuals carrying on business in partnership with each other.

Special conditions for avoidance of conditions for maintaining re-sale prices.

39. (1) Without prejudice to the provisions of this Act with respect to registration and to any of the powers of the Commission or of the Central Government under this Act, any term or condition of a contract for the sale of goods by a person to a wholesaler or retailer or any agreement between a person and a wholesaler or retailer relating to such sale shall be void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the re-sale of goods in India.

(2) After the commencement of this Act, no supplier of goods whether directly or through any person or association of persons acting on his behalf shall notify to dealers or otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the re-sale of the goods in India.

(3) This section shall apply to patented articles (including articles made by a patented process and articles made under any trade mark) as it applies to other goods and notice of any term or condition which is void by virtue of this section or which would be so void if included in a contract of sale or agreement relating to the sale of such article shall be of no effect for the purpose of limiting the right of a dealer to dispose of that article without infringement of the patent:

Provided that nothing in this section shall affect the validity as between the parties and their successors, of any term or condition of a licence granted by the proprietor of a patent or by a licensee under any such licence or of any assignment of a patent, so far as it regulates the price at which articles produced or processed by the licensee or the assignee may be sold by him.

Explanation.—In this section and in section 40, the term "supplier", in relation to supply of any goods, means a person who supplies goods to any person for the ultimate purpose of re-sale and includes a wholesaler, and the term "dealer" includes a supplier and a retailer.

Prohibition of other measures for maintaining re-sale prices.

40. (*1*) Without prejudice to the provisions of this Act with respect to registration and to any of the powers of the Commission or of the Central Government under this Act, no supplier shall withhold supplies of any goods from any wholesaler or retailer seeking to obtain them for re-sale in India on the ground that the wholesaler or retailer—

(*a*) has sold in India at a price below re-sale price, goods obtained, either directly or indirectly, from that supplier, or has supplied such goods, either directly or indirectly, to a third party who had done so; or

(*b*) is likely if the goods are supplied to him to sell them in India at a price below that price or supply them, either directly or indirectly, to a third party who would be likely to do so.

(*2*) Nothing contained in sub-section (*1*) shall render it unlawful for a supplier to withhold supplies of goods from any wholesaler or retailer or to cause or procure another supplier to do so if he has reasonable cause to believe that the wholesaler or the retailer, as the case may be, has been using as loss leaders any goods of the same or a similar description whether obtained from that supplier or not.

(*3*) A supplier of goods shall be deemed to be withholding supplies of goods from a dealer if he—

(*a*) refuses or fails to supply those goods to the order of the dealer;

(*b*) refuses to supply those goods to the dealer except at prices, or on terms or conditions as to credit, discount or other matters which are less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or

(c) treats a dealer, in spite of a contract with such dealer for the supply of goods, in a manner less favourable than that in which he normally treats other dealers in respect of time or methods of delivery or other matters arising in the performance of the contract.

(*4*) A supplier shall not be deemed to be withholding supplies of goods on any of the grounds mentioned in sub-section (*1*), if, in addition to that ground, he has any other ground which alone would entitle him to withhold such supplies.

Explanation I.— "Re-sale price", in relation to sale of goods of any description, means any price notified to the dealer or otherwise published by or on behalf of the supplier of the goods in question (whether lawfully or not) as the price or minimum price which is to be charged on, or is recommended as appropriate for, a sale of that description or any price prescribed or purporting to be prescribed for that purpose by any contract or agreement between the wholesaler or retailer and any such supplier.

Explanation II.—A wholesaler or retailer is said to use goods as loss leaders when he re-sells them otherwise than in a genuine sea-

sonal or clearance sale not for the purpose of making a profit on the re-sale but for the purpose of attracting to the establishment at which the goods are sold, customers likely to purchase other goods or otherwise for the purpose of advertising his business.

Power of Commission to exempt particular classes of goods from sections 39 and 40.

41. (*1*) The Commission may, on a reference made to it by the Registrar or any other person interested, by order, direct that goods of any class specified in the order shall be exempt from the operation of sections 39 and 40 if the Commission is satisfied that in default of a system of maintained minimum re-sale prices applicable to those goods—

(*a*) the quality of goods available for sale or the varieties of goods so available would be substantially reduced to the detriment of the public as consumers or users of those goods, or

(*b*) the prices at which the goods are sold by retail would, in general and in the long run, be increased to the detriment of the public as such consumers or users, or

(*c*) any necessary services actually provided in connection with or after the sale of the goods by retail would cease to be so provided or would be substantially reduced to the detriment of the public as such consumers or users.

(*2*) On a reference under this section in respect of goods of any class which have been the subject of proceedings before the Commission under section 31, the Commission may treat as conclusive any evidence of fact made in those proceedings.

CHAPTER VII

POWER TO OBTAIN INFORMATION AND APPOINT INSPECTORS

Power of Registrar to obtain information.

42. (*1*) If the Registrar has reasonable cause to believe that any person is a party to an agreement subject to registration under section 35, he may give notice to that person requiring him within such time, not less than thirty days, as may be specified in the notice, to notify to the Registrar whether he is a party to any such agreement and, if so; to furnish to the Registrar such particulars of the agreement as may be specified in the requisition.

(*2*) The Registrar may give notice to any person by whom particulars are furnished under section 35 in respect of an agreement or to any other person being a party to the agreement requiring him to furnish to the Registrar such further documents or information in his possession or control as the Registrar may consider expedient for the purpose of, or in connection with, the registration of the agreement.

(*3*) Where a notice under this section is given to a trade association, the notice may be given to the secretary, manager or other similar officer of the association and for the purposes of this section any such association shall be treated as a party to an agreement to which members of the association, or persons represented on the association by those members, are parties as such.

(4) If the particulars called for under sub-section (1) or sub-section (2) are not furnished, the Commission may, on the application of the Registrar,—

(a) order the person or, as the case may be, the association to furnish those particulars to the Registrar within such time as may be specified in the order, or

(b) authorise the Registrar to treat the particulars contained in any document or information in his possession as the particulars relating to the agreement, or

(c) in case the Commission is satisfied that the failure to furnish the particulars is wilful, make an order restraining wholly or partly the parties to the agreement from acting on such agreement and from making any other agreement to the like effect.

Power to call for information

43. Notwithstanding anything contained in any other law for the time being in force, the Central Government may, by a general or special order, call upon any undertaking to furnish to that Government periodically or as and when required any information concerning the activities carried on by the undertaking, the connection between it and any other undertaking, including such other information relating to its organisation, business, cost of production, conduct, trade practice or management, as may be prescribed to enable that Government to carry out the purposes of this Act.

Power to appoint Inspectors

44. (1) The Central Government may, if it is of opinion that there are circumstances suggesting that an undertaking is indulging in any monopolistic or restrictive trade practice or is, in any way, trying to acquire any control over any dominant or inter-connected undertaking, appoint one or more inspectors for making an investigation into the affairs of the undertaking.

(2) The provisions of section 240 and section 240A of the Companies Act, 1956, so far as may be, shall apply to an investigation made by an inspector appointed under this section as they apply to an investigation made by the inspector appointed under that Act. 1 of 1956

CHAPTER VIII

OFFENCES AND PENALTIES

Penalty for contravention of section 21.

45. If any person contravenes the provisions of section 21 or any order made thereunder, he shall be punishable with fine which may extend to rupees one lakh.

Penalty for contravention of section 22 or section 23 or section 24 or section 27.

46. If any person contravenes the provisions of section 22 or section 23 or section 24 or section 27, he shall be punishable with fine which may extend to rupees one lakh, and where the offence is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first, during which such contravention continues.

47. If any person contravenes, without any reasonable excuse, the provisions of section 25 he shall be punishable with fine which may extend to two thousand rupees, and where the offence is a continuing one, with a further fine which may extend to two hundred rupees for every day, after the first, during which such contravention continues. Penalty for contravention of section 25.

48. (*1*) If any person fails, without any reasonable excuse, to register an agreement which is subject to registration under this Act, he shall be punishable with fine which may extend to five thousand rupees, and where the offence is a continuing one, with a further fine which may extend to five hundred rupees for every day, after the first, during which such failure continues. Penalty for failure to register agreements.

(*2*) If any undertaking, to which Part A of Chapter III applies, fails, without any reasonable excuse, to make an application under section 26 to register itself as an undertaking to which that Part applies, then,—

(*a*) the undertaking, where it is a company, or

(*b*) every partner of the undertaking, where it is a firm, or

(*c*) where it is not a company or a firm, every person who owns or controls the undertaking,

shall be punishable with fine which may extend to one thousand rupees, and where the offence is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such failure continues.

49. (*1*) If any person fails, without any reasonable excuse, to furnish any information required under section 43 or to comply with any notice duly given to him under section 42, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to one hundred rupees for every day, after the first, during which such failure continues. Penalty for offences in relation to furnishing of information.

(*2*) If any person, who furnishes or is required to furnish any particulars, documents or any information—

(*a*) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or

(*b*) omits to state any material fact knowing it to be material; or

(*c*) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Penalty for officers in relation to orders under the Act.

50. If any person contravenes any order made under section 13 or section 31 or section 37, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to five hundred rupees for every day, after the first, during which such contravention continues.

Penalty for offences in relation to re-sale price maintenance.

51. If any person contravenes the provisions of section 39 or section 40, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

Penalty for wrongful disclosure of information.

52. If any person discloses an information in contravention of section 60, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Offences by companies.

53. (*1*) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(*a*) "company" means a body corporate and includes a firm or other association of individuals; and

(*b*) "director" in relation to a firm, means a partner in the firm.

CHAPTER IX

MISCELLANEOUS

Power of Central Government to impose conditions.

54. (*1*) The Central Government may, while—

(*a*) according any approval, sanction, permission, confirmation or recognition, or

(*b*) giving any direction or issuing any order, or

(c) granting any exemption,

under this Act in relation to any matter, impose such conditions, limitations or restrictions as it may think fit. limitations and restrictions on approvals, etc., given under the Act.

(2) The Central Government shall have the power to modify any scheme of finance submitted to it under this Act in such manner as it thinks fit.

(3) If any condition, limitation or restriction imposed by the Central Government under sub-section (1) or any term of a scheme of finance, as modified under sub-section (2), is contravened, the Central Government may rescind or withdraw the approval, sanction, permission, confirmation, recognition, direction, order or exemption made or granted by it.

55. Any person aggrieved by any order made by the Central Government under Chapter III or Chapter IV, or, as the case may be, of the Commission under section 13 or section 37, may, within sixty days from the date of the order, prefer an appeal to the Supreme Court on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908. Appeals.

5 of 1898.

56. No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act. Jurisdiction of courts to try offences.

57. No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code. Cognizance of offences.

45 of 1860.

58. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Presidency Magistrate or any Magistrate of the first class to pass any sentence authorised by this Act in excess of his powers under section 32 of the said Code. Magistrates' power to impose enhanced penalties.

5 of 1898.

59. No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statements: Protection regarding statements made to the Commission.

Provided that the statement—

(a) is made in respect to a question which he is required by the Commission to answer; and

(b) is relevant to the subject-matter of the inquiry.

60. (1) No information relating to any undertaking, being an information which has been obtained by or on behalf of the Commission for the purposes of this Act, shall, without the previous permission in writing of the owner for the time being of the undertaking, be disclosed otherwise than in compliance with or for the purposes of this Act. Restriction on disclosure of information.

(2) Nothing contained in sub-section (1) shall apply to a disclosure of an information made for the purpose of any legal proceeding pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this Act or otherwise, or for the purposes of any report relating to any such proceeding.

Power of the Central Government to require the Commission to submit a report.

61. The Central Government may at any time require the Commission to submit to it a report on the general effect on the public interest of such trade practices as, in the opinion of that Government, either constitute or contribute to monopolistic or restrictive trade practices or concentration of economic power to the common detriment.

Reports of the Commission to be placed before Parliament.

62. The Central Government shall cause to be laid before both Houses of Parliament an annual report, and every report which may be submitted to it by the Commission from time to time, pertaining to the execution of the provisions of this Act.

Members, etc., to be public servants.

63. Every member of the Commission, the Director and the Registrar, and every member of the staff of the Commission, and of the Director and the Registrar, shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Protection of action taken in good faith.

64. (1) No suit, prosecution or other legal proceedings shall lie against the Commission or any member, officer or servants of the Commission, the Director, the Registrar or any member of the staff of the Director or the Registrar in respect of anything which is in good faith done or intended to be done under this Act.

(2) No suit shall be maintainable in any civil court against the Central Government or any officer or employee of that Government for any damage caused by anything done under, or in pursuance of any provisions of, this Act.

Inspection of, and extracts from, the register.

65. (1) The register, other than the special section, shall be open to public inspection during such hours and subject to the payment of such fees, not exceeding rupees twenty-five, as may be prescribed.

(2) Any person may upon the payment of such fee, not exceeding rupee one, for every one hundred words, as may be prescribed, require the Registrar to supply to him a copy of, or extract from, any particulars entered or filed in the register, other than the special section, certified by the Registrar to be a true copy or extract.

(3) A copy of, or extract from, any document entered or filed in the register certified under the hand of the Registrar or any officer authorised to act in this behalf shall, in all legal proceedings, be admissible in evidence as of equal validity with the original.

Power to make regulations.

66. (1) The Commission may make regulations for the efficient performance of its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely:—

(a) the conditions of service, as approved by the Central Government, of persons appointed by the Commission;

(b) the issue of the processes to Government and to other persons and the manner in which they may be served;

(c) the manner in which the special section of the register shall be maintained and the particulars to be entered or filed therein;

(d) the duties and functions of the Registrar and the Director;

(e) the payment of costs of any proceedings before the Commission by the parties concerned and the general procedure and conduct of the business of the Commission;

(f) any other matter for which regulations are required to be, or may be, made under this Act.

Power to make rules.

67. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which notices may be given or applications may be made to it under this Act and the fees payable therefor;

(b) the particulars to be furnished under this Act and the form and manner in which and the intervals within which they may be furnished;

(c) the conditions of service of members of the Commission and the Registrar;

(d) the places and the manner in which the register shall be maintained by the Registrar and the particulars to be entered therein;

(e) the fees payable for inspection of the register and for obtaining certified copies of particulars from the register;

(f) the travelling and other expenses payable to persons summoned by the Commission to appear before it;

(g) the criterion to be adopted for determining the circumstances in which conditions or matters enumerated in sections 21, 23 and 25 shall be considered to exist;

(h) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.